THE COMPLETE
REAL ESTATE ENCYCLOPEDIA

From AAA Tenant to Zoning Variance
and EVERYTHING In Between

Includes Online Access to Essential Forms, Formulas,
and Hundreds of Valuable Resources

DENISE L. EVANS, JD & O. WILLIAM EVANS, JD

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Dedication

This book is dedicated to my parents, Norm and Pat Lier, who bought a set of encyclopedias for me when I was still a baby. Not that I was a prodigy—they just liked to plan ahead. Over the years, they bought more reference materials and dictionaries, and always told me to "look it up" when I had a question. They encouraged me to read anything, to learn everything, and to have fun with both. Then they threatened to punish me if I continued reading to my younger brothers, who were in danger of never learning the skill at all if I always insisted on doing it for them!

Thank you, Mom and Dad, for everything. You've been wonderful role models, tireless cheerleaders, and the finest parents imaginable. I'm sure you still have the receipt for that original set of encyclopedias. Maybe we can find the salesman, and sell him one of mine!

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Foreword

Real Estate is a fascinating subject. It is absolutely captivating when you begin to understand it. With this book, Denise and Bill Evans have given the reader the primary tools of a great education in real estate, and an opportunity to share in our wonderful and exciting industry. Their encyclopedia includes not just definitions of the lingo of the real estate community, but also examples to put the language into understandable context. Many of the entries include practical advice about opportunities, pitfalls, and related concepts. This book is a terrific educational achievement that provides immense value for the real estate novice and the seasoned professional alike.

What gives me the right to say all this? I've been active in real estate for over 50 years, including work in construction, government, corporate America, and private legal practice.

As a young man, I needed to work during the "down times," finishing up undergraduate school at UCLA in June 1955 and waiting to go into the service in 1956. I found employment in the heavy earth-moving construction business in the fast-paced housing construction and office-industrial developments of southern California. I saw first-hand the real world application of important real estate principles. In February 1959, I returned from active duty as an Air Force pilot to Orange County, California and started UCLA Law School the following September. Still intrigued with the real estate industry, I returned to the construction business part-time during the first year of law school. After completing law school and passing the bar exam in 1962, I joined an Orange County law firm that had a significant portion of its work in the real estate field.

In June of 1969 I was appointed Chief Deputy Commissioner of Corporations by Ronald Reagan, who was governor of California at the time. Because of my extensive real estate experience, I was, along with the Commissioner, responsible for drafting rules for real estate syndications in California. These rules were substantially adopted by the SEC and NASD.

In 1972, at the end of my term, I returned to private practice in Orange County, again concentrating on real estate–related matters. In 1982 I was contacted by the Century 21 real estate brokerage franchise to prepare a business plan for Century 21 to sell real estate syndication interests through the Century 21 brokerage offices nationwide, in each of the nine Century 21 regions.

Bill Evans was recommended to me as someone who could prepare, plan, and manage the training for the real estate syndications licensing program. Previously, Bill had been responsible for other real estate training programs throughout the southeastern United States, but this was his first national platform. He rose to the occasion, writing the textbooks and traveling the United States to conduct week-long courses, primarily to residential agents with no prior commercial real estate or securities experience. Over the course of 18 months, he took the program from absolutely nothing to successful real estate syndication licensing of over 700 candidates, which included their completion of a national securities exam. Miraculously, he found time to get married to Denise, and she eventually forgave me for keeping Bill on the road so much.

Since that time, we've each gone on to other endeavors outside Century 21, but we've all stayed active in real estate. Denise and Bill Evans are a great team in all their real estate related endeavors. I am confident that this book will herald another team victory.

James L. Kelly

Former President of Century 21
Real Estate Securities Corporation

Preface

This work started out as a simple dictionary, an attempt to explain complicated real estate and finance concepts in everyday language. Somewhere along the way we discovered that definitions were often not enough. People needed to know about related issues, sometimes a little practical advice, and places to look on the Internet for more in-depth treatment.

And so, the little dictionary grew to this encyclopedia. We hope you find it useful in your everyday life, and a much-used resource for refining your understanding of real estate in the United States.

Up until the final day allowed by the publisher, we were adding new words. There will always be new words, new ways to use old words, and fresh perspectives on tried-and-true concepts. On the other hand, we can't print new versions of the encyclopedia every week. That's why we're really excited about the commitment McGraw-Hill has made to this project, and to the maintenance of a Web site dedicated to the encyclopedia.

The Web site will contain real estate–related tools such as forms, formulas, and links to valuable Web sites. It will also provide new words and expanded definitions as those become available.* This book will grow as we grow. Please feel free to share your comments with us by sending an e-mail to dle@deniselevans.com.

*Take advantage of this additional information by going to mhprofessional.com/reencyclopedia.

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Acknowledgments

We would like to thank Dianne Wheeler and McGraw-Hill for making this exciting new project possible. There is a tremendous risk in publishing a work of this stature, in a fresh new format not yet tried by any other company. They believed in us, made available their top people to provide editorial and production assistance, and committed to a Web site for this book before they had seen the first draft. Thank you for the vote of confidence. We look forward to seeing you gratified to learn it was well-placed.

Thank you, also, to J. Barry Mason, Dean of the Culverhouse College of Commerce and Business Administration at the University of Alabama, for making the resources available to us so we could research this encyclopedia. We appreciate all of his confidence and support, and the nurturing and supportive environment he has encouraged in the entire College among students, faculty, and staff.

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THE COMPLETE REAL ESTATE ENCYCLOPEDIA

Numbers

80–10–10 mortgage A type of mortgage arrangement with 80 percent of the purchase price paid by a first mortgage, 10 percent paid by a second mortgage, and the final 10 percent in down payment; sometimes used in order to avoid having a 90 percent first mortgage and the required private mortgage insurance premiums.

203(b) loan Standard FHA-insured fixed-interest rate mortgage loans for one- to four-family residential properties. The loan program features the ability to have down payments as low as 3 percent and to finance closing costs as part of the loan. There are limitations on the maximum size loan that can qualify. The limitations change over time and by geographic area. The comparable adjustable-rate program is called a 251 loan.

203(k) loan Also called a HUD rehabilitation and repair loan, it is an FHA-insured loan obtained through independent lenders. Single-family to four-unit residential properties are eligible, as well as mixed-use properties with certain ratios of residential to commercial uses. Rehab money can be used for normal repairs or improvements, or to convert a single-family home to a multifamily dwelling (up to four units) or the reverse. Homes that have been demolished, or will be razed as part of the rehab, are eligible as long as some of the foundation structure remains. The maximum loan amount is 110 percent of the value of the property after rehab. (Do not confuse this type of loan with HUD's property improvement loan, also called a Title I loan.)

203(n) loan FHA-insured loan for the purchase of a unit in a cooperative apartment building. [Program details are similar to that of a 203(b) loan.]

234(c) loan FHA-insured loan for the purchase of a condominium unit. If the unit is in a building converted from apartments to condos, no insurance will be provided unless (1) the conversion was more than one year earlier, (2) the potential buyer was a tenant before conversion, or (3) the conversion is supported by a tenant's organization that represents a majority of the households in the project. Eighty percent of FHA-insured mortgages in the project must be to owner-occupants. [Otherwise, it is similar to the 203(b) program.]

234(d) loan An FHA-insured loan for the construction or rehabilitation of housing projects intended to be sold as condominium units.

245 loan An FHA-insured loan program also called the graduated payment mortgage. It allows home purchasers to begin with low monthly mortgage payments and then steadily increase them over the next 5 to 10 years, when they will remain constant.

245(a) loan FHA-insured loan program also called Growing Equity Mortgage (GEM) Insurance.

251 loan A standard FHA-insured mortgage loan for one- to four-family residential properties at adjustable interest rates. The comparable fixed-rate program is called a 203(b) loan.

501(c)(3) A charitable organization, named after Internal Revenue Code, Section 501(c)(3), which gives such organizations tax-exempt status.

1031 exchange (pronounced "ten thirty-one exchange") From Section 1031 of the Internal Revenue Code, the ability to exchange like-kind property and defer paying taxes on the gain realized. Under normal circumstances, if a party purchases Blackacre for $10,000 and then exchanges it for $100,000 in cash, there is a gain of $90,000 on which income taxes must be paid. But, because of §1031, if Blackacre is exchanged for like-kind property, then the gain is realized (meaning it occurs) but is not recognized (meaning no tax is due at that time).

The property given up is called the relinquished property, and the property received is called the replacement property. After the exchange, the basis in the relinquished property becomes the basis in the replacement party. In other words, the $10,000 purchase price for Blackacre, called the basis, becomes the basis of the replacement property. When the replacement property is sold later for $150,000, the gain would be $150,000 less $10,000, not $150,000 less $100,000. That is true unless you do another 1031 exchange at that time. There is currently no limit on the number of exchanges you can do in a lifetime.

The properties must be qualifying use properties, meaning that they have or will be held for income production (rental) or investment, or used in a trade or business. Personal residences and vacation homes are not qualifying properties.

Swapping properties is a very handy tax tool, but it is relatively rare to find property owners who want to exchange properties at a simultaneous closing. As a result, the IRS allows the use of a fiction, a type of like-kind property proxy. In the fiction, the owner of Blackacre may sell it for cash, but the money must be placed in the hands of a qualified intermediary to hold. It is said the taxpayer can never have his or her fingerprints on the cash—not to spend, not to borrow against, nothing. The taxpayer then has 45 days to identify a replacement property and complete a form with the identification information. After that, the taxpayer has a short time to close on the replacement property, for which the funds in the hands of the qualified intermediary may be used. If all this is done exactly right, the taxes will be deferred.

[This entry does not allow enough space for all the technicalities of a 1031 exchange. Specific details of a 1031 exchange can be found at the IRS Web site (www.irs.gov), "Publication 544, Sales and Other Dispositions of Assets" and "Form 8824, Like-Kind Exchanges" (PDF).]

1099 The IRS form for reporting payments made to independent contractors or interest earned on investments or bank accounts. The person completing the form supplies copies to the party receiving the payments and to the IRS and state and local taxing authorities. If one's tax return does not disclose income reported on a 1099, there is a high likelihood of an audit. Real estate agents typically receive 1099s from their brokers for commissions earned during the prior year.

A

AAA tenant (pronounced "triple-A tenant" but written as AAA tenant) Commercial tenant with the best possible credit rating and the least likely possibility of default. Owners can secure better selling prices or better financing terms if they have such tenants in their property.

abandonment An intentional surrender, disclaimer, or termination of ownership with no stated intention regarding who the next owner should be. Legally requires some external evidence of an intention to abandon; simply neglecting property will not suffice. Differs from surrender, which requires that someone accept the property, and from forfeiture, which is unintentional loss of property. Abandoned property will generally revert to someone with a prior claim, such as an abandoned leasehold reverting to the landlord or an abandoned easement reverting to the landowner. Sometimes abandoned property will escheat to the state.

abatement A reduction or decrease. Local governments sometimes offer tax abatements to new businesses in order to attract them to the area. Commercial leases usually have clauses denying rent abatement if the leased property is partially destroyed and then rebuilt and made usable again.

able to purchase Financially capable of gaining access to the necessary funds to complete a purchase. Real estate brokers with a written listing agreement are usually entitled to a commission if they produce a buyer who is "ready, willing, and able" to acquire the subject property at the asking price, even if the seller then refuses to go through with the sale.

abnormal sale In appraisals, a sale that is not typical of the market at that place and time. Such a sale may be the result of family transactions, ignorance of true values, threat of foreclosure, or other unusual events and will not be used to determine the value of the property being appraised.

abode Residence, home, domicile.

above building standard Typically refers to items not included in a landlord's construction work letter. A new tenant can usually negotiate the landlord's agreement to pay for all construction expenses necessary to customize space to building standard, which might be hollow doors, inexpensive carpet, 2 ft × 4 ft ceiling tiles, and fluorescent light fixtures, depending on the building. Anything above building standard must generally be paid by the tenant.

abrogate Withdraw, rescind, revoke, or cancel. Common usage implies an act done in a one-sided or high-handed manner, but this is not necessary to the definition.

absentee owner One who does not personally occupy or manage their property.

absolute auction A sale will be to the highest bidder, regardless of the amount bid. Common wisdom among auctioneers is that a property advertised as being sold at absolute auction will attract more bidders and higher bidding prices than one advertised with even a low minimum acceptable bid, or reserve price.

absolute net lease Also called a triple net lease, in which the tenant pays rent plus all costs of ownership, such as insurance, real estate taxes, repairs, cleaning, and utilities.

absolute net rent Rent payments that are pure income to the landlord, because they are not reduced by any operating expenses. When an owner quotes a figure as absolute net rent, it is a clue that the tenant will also have to pay all insurance, real estate taxes, repairs, cleaning, and utilities in addition to the monthly rent.

absolute title A title to real estate without any competing claims such as IRS liens, prior mortgages, leases, easements, or spousal claims. A lender will usually require either clear title in the borrower, or waivers by other parties, so the lender will have absolute title if it has to foreclose. Also called clear title.

absorption rate The rate at which vacant space is leased or purchased over a specified period of time. The absorption rate for commercial property is usually expressed in square feet per year; residential property is quoted in units (homes) per year.

abstract deed Colloquial expression used to refer to the original deed from the government to the first private owner of a parcel of land. Other times, it is meant to describe a deed that recites all former owners and their dates of acquisition. Sometimes purchasers who request an abstract deed mean to communicate that they want title insurance or a title opinion in addition to the deed. Technically, there is no legal instrument called an abstract deed. (When you encounter this expression, ask questions in order to determine what is meant.)

abstract of title Synopsis of all prior owners and important claimants to property, with the date and origin of their rights and date and manner of termination, together with all current owners, lienholders, easements, or other such claims against the property.

Sidewalk abuts the house

abut Next to, touching, contiguous. Typically arises in the context of whether property owners have a duty to clean snow, ice, and debris from the sidewalks abutting their property.

A/C Shorthand for air conditioning.

accelerate To demand the full amount due under a contract even though the original agreement allowed payments over time. Almost all promissory notes and leases have acceleration clauses in the event of default. If it were not for such clauses, the lender or landowner could be required to file separate lawsuits when each payment was missed, or wait until the end of the term and sue for all at once.

accelerated amortization Making additional mortgage payments so as to reduce the principal amount of the debt more quickly than originally contemplated in the parties' agreement.

accelerated cost recovery system (ACRS) A method of tax accounting in which the IRS simplified the rules for depreciation of property. It has been replaced by the modified accelerated cost recovery system (MACRS), but you will still encounter references to ACRS.

accelerated depreciation Depreciation methods that allow larger deductions in early years, trailing off to smaller deductions in later years. It is the opposite of straight-line depreciation, in which equal amounts are depreciated every year. Accelerated depreciation is not allowed for real property, but may be employed for certain components, such as fencing, security systems, carpet, or windows. The most common types of accelerated depreciation encountered in real estate are double declining balance, also called 200 percent declining balance, and the alternative 150 percent declining balance method.

> **Example:** *Carpeting in residential rental properties may be depreciated over 5 years. Assuming $10,000 worth of carpeting is installed in an apartment building, this is each year's depreciation using the different methods:*

	Straight Line	150% Declining	200% Declining
Year 1	$2,000	$3,000	$4,000
Year 2	2,000	2,100	2,400
Year 3	2,000	2,000	2,000
Year 4	2,000	2,000	1,600
Year 5	2,000	900	0

acceleration clause The clause in a promissory note or lease that allows immediate demand, upon default, for all sums due over the entire term.

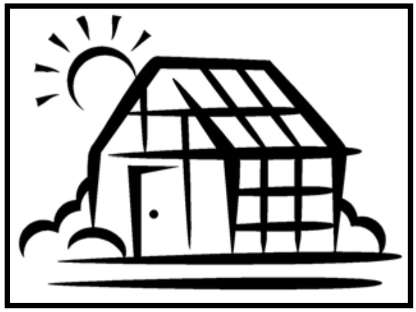
acceptance (1) The act of receiving something with the intention of retaining it. Transfer of title to real estate requires acceptance of the title. (One cannot secretly deed a toxic waste site to an enemy in hopes that the Environmental Protection Agency will make that person handle the cleanup.) (2) The act of agreeing to the terms and conditions of an offer, creating a contract by virtue of the acceptance.

Access Board An independent federal agency that develops and maintains design criteria for buildings and other improvements, transit vehicles, telecommunications equipment, and electronic and information technology. It also enforces accessibility standards that cover federally funded facilities. The Access Board's Web site is www.access-board.gov.

accessibility (1) Evaluation of the convenience of a property relative to the people who will be using it. May refer to ingress and egress for customers or lack of obstructions for persons with disabilities. (2) Important component in pricing surveying services. The more difficult the terrain and the less accessible the site; the more expensive the fee.

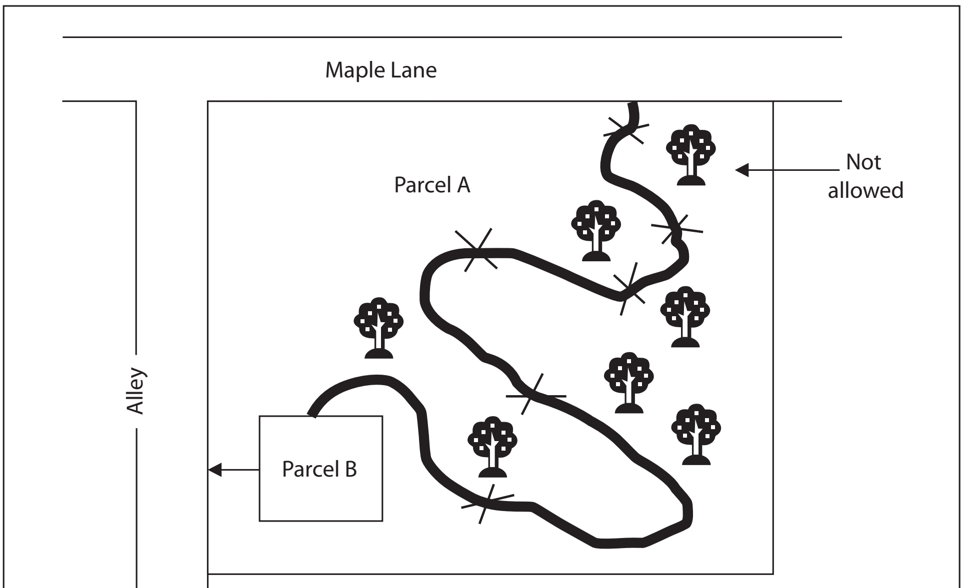
accession The right to own things that become a part of something you already own. When a tenant adds built-in cabinetry or other fixtures to a building, they become the property of the landlord by virtue of accession. Also frequently encountered in the realm of riparian (water) rights, such as new land created by dry river beds or retreating tidal lands.

accessory building A secondary structure that exists for the benefit of the main building, such as a tool shed or a detached garage. When drafting an offer to purchase real estate, you should be sure to include accessory buildings in your description. Otherwise, easily movable sheds and other structures not permanently affixed to the soil might be removed before closing.



A greenhouse is an accessory building.

access right The right of owners to get to or from their property. Legally, no land may be landlocked. Therefore, if a parcel is cut off from all public roads and there are no easements for ingress and egress, then the owner may bring suit and have a court declare an easement of necessity over the land of another. (This is one of the rare times when private individuals are able to bring condemnation actions and force another to give them property rights.)



Parcel B must use the most direct access across Parcel A, to the public alley, not the scenic route to Maple Lane

Example: *Parcel B is landlocked, but the owner is entitled to access rights to public roads and may force the owner of parcel A to provide an ingress and egress easement. The easement must be via the most direct route to the nearest public road, without being unduly burdensome on parcel A. The owner of parcel B may not force the owner of parcel A to provide a scenic route.*

accommodating party A third party who holds money or other property for a short period of time in order to facilitate a tax-free exchange under Section 1031 of the IRS Code. The third party is called a qualified intermediary in the tax regulations.

Example: *Jack sells his office building to Jill for $400,000. Jill pays the money to Larry Lawyer, who keeps it in his escrow account. Larry is the accommodating party. When Jack meets the timing requirements of Section 1031 and wants to buy an apartment building for $1,000,000, Larry will write a check to the seller for $400,000 and Jack will pay the remaining $600,000. In common language, Jack can't have his fingerprints on the money, so an accommodating party is necessary.*

accommodation party One who signs a promissory note even though he or she receives no direct economic benefit from it. Typically, a financially strong party who must add his or her name to the transaction or the true borrower would not qualify for the loan. There is a widespread and mistaken belief among accommodation parties that they simply signed their name but will not be held responsible if the loan goes into default. This is incorrect; they will be held liable for the full amount of the loan if there is a default. (*Do not confuse with accommodating party.*)

Accredited Rural Appraiser (ACR) A designation granted by the American Society of Farm Managers and Rural Appraisers (www.asfmra.org).

accretion The addition of land through natural causes, such as gradual silting. You will often see accretion used to also describe the addition of land because of receding waters, but this is more properly called dereliction.

accrual method An accounting method in which income is counted when it is earned (whether you receive the money at that time or not) and expenses are counted when incurred (whether you pay the bill at that time or not). It is the opposite of the cash method, in which income is counted when money is received and expenses are counted when the bills are paid. Most businesses use the accrual method because it allows income, and the expenses associated with generating that income, to be accounted for in the same period. (Many small businesses use the cash method because it's easier.)

accrue To accumulate; grow. A $100,000 loan at 7 percent interest accrues interest at the rate of $7,000 per year, or $19.18 per day. The mortgage holder on a property being sold will typically tell the closing company a payoff amount accurate as of the anticipated closing date, with a daily accrual for each day closing is delayed.

accrued but unpaid Money that has been earned, such as interest on a mortgage loan, but not yet collected.

accrued depreciation The total depreciation claimed, to date, on a property. It is an entry on the balance sheet and is supposed to properly reflect that the property is becoming less valuable with the passage of time. Realistically, in the case of real estate, the property is usually becoming more valuable each year. As a result, you may have a book value of $200,000 but a fair market value of $2,000,000.

accrued interest For every day that a loan remains unpaid by the borrower, it earns interest that must be paid to the lender. This process of earning interest with each passing day is called accrual, and the money earned is called accrued interest. It may not be payable until the first day of the next month, but it has already been fully earned by the lender. See also *nonaccrual*.

accumulated depreciation Also called *accrued depreciation*.

acknowledge To accept responsibility for something. In real estate, it means to sign an instrument in front of a notary public, who will certify that the signer stated the signature was an act of free will.

acknowledgment A declaration by one signing an instrument, usually a deed, mortgage, or will, that their signature was free and voluntary. The declaration must be made before an authorized person, usually a notary public, but may also be designated court officials or others named by statute.

ACM See *asbestos containing material*.

acquisition The act of obtaining ownership of something. It may occur through derivative acquisition—procured from another who previously owned the thing—or though original acquisition, which is new creation such as land made when the ocean recedes.

acquisition cost The price and all related expenses of obtaining property; may include closing expenses, survey, inspections, and paying off adverse claimants.

acquisition, development, and construction (ADC) loan A loan made to allow a developer to buy land, install infrastructure such as streets and sewers, and build improvements. Because the value of the collateral depends on the development process adding significant value, these are considered somewhat risky loans. As a result, lenders limit the number of ADC loans they extend. A loan turndown from one lender may not be a stamp of disapproval for the project, but simply that lender's inability to extend any more ADC loans until others are paid off or converted to permanent financing.

acquisition loan A loan made to acquire a property, also called a purchase money loan. In bankruptcy law, acquisition lenders receive some special priorities and benefits not granted to other creditors.

acre Historically, the amount of land a yoke of oxen could plow in one day; today, a quantity of land containing 43,560 square feet. An acre can be any shape. Especially in the case of commercial properties, land values are usually expressed in terms of price per square foot rather then price per acre.

Example: *If you know that a 16-acre parcel recently sold for $10,000,000, you calculate the price per foot as follows:*

16 acres × 43,560 square feet per acre = 696,960 square feet
$10,000,000 ÷ 696,960 feet = $14.35 per square foot

acreage zoning Zoning intended to reduce residential density by requiring large building lots.

acre-foot A quantity of water, sand, or minerals equal to a volume 1 foot high over one hypothetical acre of land. It arises in the context of pricing water for irrigation purposes, estimating the value of minerals in place under the soil, and estimating numbers of fish per acre-foot of water.

ACRS See *accelerated cost recovery system*.

action to quiet title See *quiet title action*.

active participation An IRS term relating to passive activity losses that can be deducted only against passive activity income, not against ordinary income. Rental activities are always passive, unless you are a real estate professional. There is a small loophole—if you or your spouse actively participated in a passive rental real estate activity, you can still deduct up to $25,000 in rental activity losses from ordinary income. As a result, taxpayers are eager to prove they have active participation in their real estate investments so that large depreciation expenses, for example, can shelter income from other sources. Active participation can be shown if you make bona fide management decisions such as approving new tenants, deciding rental terms, approving expenditures, and similar activities. (See IRS Publication 925, "Passive Activity and At-Risk Rules" at the IRS Web site www.irs.gov.)

active remediation Engaging in some affirmative action to remove contaminants from soil or water. The alternative is passive remediation, which is usually accomplished by normal flushing processes occurring over time.

active solar heating Method of heat that relies upon the sun to heat either air or liquids in a solar collector, and then distribute that heat throughout the structure. Contrast with passive solar heat.

Act of God An act caused exclusively by the violence of Nature, without any intervention from humans. Many contracts contain clauses relieving the parties of responsibility if an Act of God delays or makes impossible the performance of the contract. Examples include earthquakes, floods, hurricanes, lightning, tidal waves, tornadoes. (With current controversy over the effects of global warming, and with allegations that deficiencies in the New Orleans levee system caused the massive flooding in 2005, we can expect renewed litigation concerning flooding as an Act of God or of humans.)

actual age In appraisal, the true age of a property, as opposed to its effective age. A building might have an actual age of 25 years but an effective age of 3 years because of massive renovations made 3 years earlier. A house with six small children in the family might have an actual age of 2 years and an effective age of 18 years.

actual damages Losses or injuries for which the law allows compensation as a means of reimbursement; used also to refer to the money awarded by a court as that compensation. Contrast with nominal damages, which would award $1, but recognize that the plaintiff's rights have been violated even though no economic, physical, or emotional harm occurred. Contrast also with punitive damages, which are not intended to compensate the victim but to punish the aggressor.

Actual damages may be

- Direct damages—those that flow directly and naturally from the wrong
- Consequential damages—those that flow from some consequence of the wrong

> **Example:** *Able agrees to purchase Baker's house. As a result of that contract, Baker agrees to buy a new condo under construction and pays a nonrefundable $5,000 reservation fee. Able then defaults and refuses to purchase Baker's house, even though Able has no justifiable reason for doing so. Two weeks later the stock market crashes, and Baker counts himself lucky when he is able to sell his house for $40,000 less than the original contract price. But, Baker is now unable to purchase the condo and loses his $5,000. Under the right circumstances, Able could be liable to Baker for actual damages consisting of the $40,000 difference in the two sale prices (direct damages) and for the loss of the $5,000 earnest money (consequential damages—more indirect and less predictable) and for punitive damages.*

actual eviction Removing someone from property either by force or by legal process. Contrast with constructive eviction, in which property is rendered unusable because of some action or inaction of the landlord.

actual notice Commonly means notice expressly and directly given to a person and received by that person. In legal documents, however, a requirement for actual notice may be satisfied through express notice or implied notice, but not by constructive notice. Express notice is given by actual delivery of the information to the person charged. Implied notice is satisfied if the person has sufficient facts available to cause him or her to ask further questions and thereby receive express notice. Constructive notice occurs when someone is charged by law with making inquiries such as would cause him or her to learn of facts giving rise to implied notice.

actual possession The physical occupancy or control of property by someone. Contrast with constructive possession in which the law assumes possession because of legal rights to the property.

> **Example:** *One who has a deed to 40 acres of land, but uses only 1 acre for a house and yard, is said to have actual possession of 1 acre and constructive possession of the other 39 acres.*

actual value The true market value of a property if it were offered for sale at a particular time to a buyer with sufficient information about the property to make an informed decision. Contrast with book value, which is the original purchase price, plus capital expenditures, minus depreciation. Contrast also with perceived value based on fraud.

ADA See *Americans with Disabilities Act*.

ADC loan See *acquisition, development, and construction loan*.

add-back The amount added to the principal balance of a loan because the monthly payments are insufficient to pay all currently accrued interest; may be encountered with variable-rate, fixed-payment loans.

addendum Something added as an attachment to a form contract, before contract execution; generally used to cover the particular circumstances of that transaction. Real estate contracts may have addenda (plural of addendum) to cover requirements relative to financing contingencies, property inspections, disclosure of the possible presence of lead-based paint in structures built before 1978, and other variables. Especially for properties with lengthy legal descriptions, an addendum will generally be used for the legal description of the property, rather than squeezing it into the small space available on the form. Contrast with amendment, which is an attachment added after contract execution in order to modify or expand upon the original contract.

additional charge mortgage A mortgage instrument that recites on its face that it is used to secure present and future debts by the borrower to the lender. It serves to put new lenders on notice that the equity in the property may decrease in the future, as a result of additional money being advanced by the first lender. See *future advances mortgage* and *anaconda mortgage*.

additional rent Amounts due under a lease in addition to the originally agreed upon base rent. Leases usually characterize all sums due to a landlord, including late fees, collection costs, and property damage, as additional rent. This gives the landlord some legal advantages as far as declaring a default, obtaining an eviction, and collecting sums due. Examples could include the tenant's share of property maintenance and insurance expenses and a retail tenant's obligation to pay a percentage of gross income in addition to base rent.

additional first-year depreciation Also called bonus depreciation. An IRS provision that allows taxpayers to take more than the ordinary depreciation in the first year a property is placed in use. (After the 9/11 attacks, taxpayers could deduct up to one-half of the basis of their property in the first year. Ordinarily, only $^1/_{39}$ or $^1/_{28}$ of the basis could be deducted in the first year. Similarly, in the wake of the devastating 2005 hurricane year, some taxpayers could take additional first-year depreciation equal to one-half of the basis.) In addition, taxpayers may take larger than normal depreciation for some property, called Section 179 property, even it if results in effectively expensing the entire purchase price in the current year.(For more information, visit the IRS Web site www.irs.gov.)

add-on interest An interest calculation sometimes used to avoid state usury laws (prohibitions against excessive interest) or to gain the equivalent of a prepayment penalty not otherwise allowed by law. The interest for the entire term of the loan is calculated as if no payments will be made until the loan matures. The total interest is added to the principal, and the borrower then makes equal monthly payments over the term of the loan. Even though the borrower reduces the outstanding principal balance with each payment, he or she is still paying interest on the whole amount borrowed. If the borrower prepays the loan, a calculation called the rule of 78s results in a disguised prepayment penalty.

> **Example:** *The difference between 8 percent simple interest and 8 percent add-on interest for a $25,000 loan paid monthly for 4 years is*
>
> | | | |
> |---|---|---|
> | *Simple interest monthly payments* | = | *$610.32* |
> | *Simple interest total interest paid* | = | *$3,586.62* |
> | *Add-on interest monthly payments* | = | *$687.50* |
> | *Total add-on interest paid* | = | *$8,000.00* |

adequate consideration See *consideration*.

adequate public facilities ordinances (APFO) A local law controlling growth by requiring completion of infrastructure—roads, sanitary and storm sewers, waterlines, and schools—prior to, or at the same time as, new private development that will need those services. Approvals for new subdivisions or commercial properties may be withheld until regulatory authorities deem there are adequate public facilities.

adhesion contract A contract that is so grossly one-sided that courts will not enforce it, or will not enforce specific terms deemed to be unconscionable or oppressively unfair, especially if the consumer has no other choices in the marketplace.

adjacent Nearby, but not necessarily touching; implies properties separated by a natural barrier such as a river, or by a street, but not separated by another property. Properties that touch each other are legally said to be adjoining rather than adjacent, but common usage includes such properties as within the definition of adjacent.

Adjacent to my property	
Maple Street	
My property	Adjoins my property

adjoining Touching, as in properties that are not separated by any natural or human-made barrier nor by any other property. Contrast with adjacent, which means nearby, but not necessarily touching.

adjudication A formal declaration by a court, addressing all issues raised by the parties.

> **Example:** *The court's adjudication declared the seller in default, ordered the seller to execute a deed to the buyer, and further assessed attorney's fees and costs against the seller.*

adjunction Adding something to property in such a manner that it loses its independent identity.

> **Example:** *Personal property consisting of boards and nails will become part of the real estate by adjunction when they are used to build an addition to a house.*

adjustable mortgage loan See *adjustable-rate mortgage*.

adjustable-rate mortgage (ARM) An instrument granting a security interest in real property as collateral for a promissory note with interest rates that change from time to time, as specified in the note. The note should contain

- An initial rate, or the first interest rate to be charged.
- A reference number, called the index, to be used in calculating future interest rates. As the index increases or decreases, the loan interest rate will increase or decrease by the same amount.
- The index could be the Federal Reserve overnight funds rate plus a certain percentage, it could be the prime rate charged by CitiBank to its most credit-worthy customers (CitiBank Prime), or any number of other indices. You want to avoid any adjustable-rate note with references to vague generalities such as "market rate" or rates charged by small unknown lenders.
- A statement regarding the frequency at which the rate may change. Commercial loans typically change every time the index changes. Consumer loans usually change only once or twice a year.
- A statement regarding the maximum amount the interest may increase each time, called a periodic cap. (Consumer loans usually have periodic caps, but not commercial loans.)
- A statement regarding the maximum amount the interest may increase over the lifetime of the loan, called a lifetime cap. (Consumer loans usually have a lifetime cap around 5 percent; commercial loans usually do not have any lifetime caps.)

Many adjustable-rate mortgages for home loans have a conversion clause allowing (or even requiring) change to a fixed rate of interest after a specified period of time, usually 5 or 7 years. This gives the homeowner the ability to lock in a fixed rate without having to go through the trouble and expense of a refinance.

One type of adjustable-rate mortgage is the fixed-payment, adjustable-rate loan. With it, the consumer pays the same amount each month, even if interest rates rise to the point that the payment does not pay the currently accruing interest. The unpaid interest is added to the principal of the loan. In such a situation, the loan is said to be negatively amortizing, meaning the principal balance grows larger each month rather than smaller.

adjusted basis A tax and accounting term referring to the original acquisition cost of a property, with the following adjustments:

- Depreciation, which reduces the basis
- Capitalized closing costs, which increase the basis
- Capital improvements, such as a new roof, which increase the basis

The difference between the adjusted basis and the ultimate sale price of a property will be the taxable profit on the sale. The adjusted basis is an extremely important tax concept, and one which it is important to master in order to comfortably evaluate properties.

adjusted sales price In an appraisal, the answer obtained when the sales price of a comparable property is adjusted for factors that make it different from the property being appraised.

Example: *Property A is being appraised, and property B is a similar property that sold recently. Property B has some features that property A does not. The sale price of property B would probably be lower if it, too, lacked that feature, so a downward adjustment is made. Likewise, property B lacks some features present in property A. If property B had those features, it would have sold for a higher price, so an upward adjustment is made in property B's sale price.*

Example: Adjusted Sales Price Calculations

	A	B	Adjustments
Sale price	—	$175,000	
Garage	Yes	No	+$40,000
Pool	No	Yes	−$25,000
Brick	Yes	No	+$8,000
Adjusted sale price of B			$198,000

adjusted tax basis See *adjusted basis*.

adjustments Closing: Debits and credits to the purchase price of a property because of items to be paid by the seller or the buyer. All adjustments should be reflected on a settlement statement. (The settlement statement used in home sales is a form, called a HUD–1, created by the Department of Housing and Urban Development.). In appraisal: See *adjusted sales price*.

administrative expenses Compensation to management for operating or building a property; may include salaries and professional fees. Contrast with operating expenses, reserves for losses, and reserves for repairs.

administrator A person appointed by a court to manage and distribute the estate of someone who has died without a will. Sometimes, the term refers to a male occupying that position, with a female being called an administratrix. Contrast with executor (male or gender-neutral) and executrix (female), who are persons named by a will to manage and distribute one's estate.

administrator's deed A deed executed by one appointed by a court to administer another's estate; usually for someone who died without a will.

administratrix Older term meaning a female appointed by a court to administer the estate of another, usually someone who died without a will. The male position was called an administrator. (Today, the term administrator is considered gender-neutral.)

administrivia Slang term meaning the nondeal points contained in small print in documents written by lawyers, especially seemingly nonsensical items such as "The masculine shall include the feminine and the singular shall include the plural."

ADR See *asset depreciation range*.

adult One who has gained the age of majority, usually 18 or 21 depending on the state. Sometimes, younger people can take legal steps to remove the "disabilities of nonage," after which they will be treated as legal adults even though under the requisite age. Only adults have the legal capacity to enter into contracts or sell property. Minors may own real estate, but, because of the inability to enter contracts, they cannot effectively manage it, obtain a mortgage, or sell the property. If such actions should prove necessary, the child's legal guardian will usually have to ask a court for permission for the proposed action. The court will then appoint a guardian ad litem to represent the child's interests, in case the guardian has a conflict of interest or clouded judgment.

ad valorem tax Literally means "according to the value." A tax placed upon property and calculated with reference to the value of the property. Ad valorem taxes usually have a super-priority, so that a sale for unpaid taxes will transfer title into the buyer, free and clear of any mortgages or other liens. On the other hand, lienholders are generally given the right to redeem property from tax sales, and regain all rights simply by reimbursing the purchaser for the sale price plus accrued interest.

advance In construction financing, to disburse money from the allowable total amount of a loan in order to pay bills currently due, or to pay the builder or developer according to a previously agreed upon schedule of payments. Typically, a certain percentage will be advanced upon approval of plans and drawings, another amount at completion of all clearing and grubbing, at the end of final grading, when the structure is in the black (the roof decking has been completed), and then again at completion and final inspection.

advance payment annuity A regular payment made at the beginning of each month, year, or other period. It is relevant to real estate because many financial calculations, such as those possible in Microsoft Excel or on a financial calculator, require entry of different formulas depending on whether you are solving for an advance payment annuity (also called an annuity due) or an ordinary annuity. Any time you want to solve an equation that involves a payment received at the beginning of a period, such as rent, you use the format for advance payment annuity. Any time you want to solve an equation that involves a payment received at the end of a period, such as mortgage payments, you use the format for ordinary annuity.

adverse claim A claim against real property that is inconsistent with the purported owner's full ownership rights.

adverse financial change condition In a loan commitment, a clause that allows the lender to cancel the commitment without penalty if the borrower's financial condition changes for the worse before loan funding.

adverse possession Sometimes called squatter's rights; method of acquiring title to real estate when the true owner has neglected to assert his or her own rights for a specified period of time.

Commonly arises in the context of boundary line disputes. The next most common occurrence is when there is some technical defect in the title which can't be cured with a corrective deed because the person who must sign has disappeared, is dead, or refuses to sign. If one actually occupies property without permission, in an open and notorious manner, that is exclusive and hostile, and the true owner takes no action to dispossess the claimant, then the actual owner will be forever barred from asserting any rights to the property. The requirement of hostility does not mean there must be animosity between the parties, but simply that the adverse possessor claims ownership of the property, and therefore is legally hostile to any other claimants. The lack of permission refers to the absence of a lease or other such agreement granting possession but not necessarily title. The required time period, called the holding period, may vary from 10 to 20 years.

By law, one cannot adversely possess against the government.

> **Example:** *Seth and Rose are next-door neighbors and the best of friends. Seth erects a fence on what he believes to be their boundary line. For the next 10 years (or 20, depending on the jurisdiction) he mows the lawn up to the fence. Rose believes the fence marks the boundary between their two properties, but she is mistaken. Rose then sells her property to Greg, who orders a survey. The survey reveals that 20 feet of Emma's land is on Seth's side of the fence. In a lawsuit over the property line, Seth will usually claim that Greg's surveyor is mistaken and will also claim that even if the survey is correct, Seth has gained title to the 20 feet by virtue of adverse possession. It was Emma's responsibility to know the true location of her property lines. If she did not assert her rights during the 10- or 20-year time period, she, and all others coming after her, lose those rights.*

aesthetic value A premium attached to the value of property because of its physical appearance or the scenic views that may be enjoyed from the property; the artistic worth of something, rather than its practical value.

aesthetic zoning Zoning regulations that require new construction to conform to certain architectural and landscaping requirements. Examples include prohibitions against metal buildings, requirements that retaining walls be hidden behind shrubberies or trees, and restrictions on the location of off-street parking. Failure to investigate aesthetic zoning requirements can result in a project going substantially over-budget and possibly becoming economically disastrous.

affiant A person who makes a written statement under oath by way of an affidavit.

affidavit A written statement signed by the person making the statement—the affiant—and sworn to as true and accurate.

affirm Confirm, ratify, positively acknowledge as correct. One may affirm a statement in an affidavit. Witnesses may affirm that all testimony to be given will be true and accurate.

affirmative lending Obligation placed upon federally chartered lenders by virtue of the Community Reinvestment Act, and upon state-chartered lenders by similar state legislation. Requires lenders to exert efforts to match the demographic character of their loan portfolios to the demographic character of the community in which they operate.

affirmative marketing program A voluntary program designed by the U.S. Department of Housing and Urban Development in order to further its fair housing goals. This program seeks to involve builders, developers, lenders, and the real estate industry in a wide variety of cooperative enterprises to improve communication, focus, and sensitivity. Signatories are contractually bound to abide by the requirements of the plan. Many local governments have their own versions of an affirmative marketing program. Developers may agree to be bound by the master plan, or they must present and obtain approval of their own plan before construction permits will be granted.

affordability index See *housing affordability index*.

affordable housing Housing for people whose income is a certain percentage below the median income for an area, as determined by the U.S. Department of Housing and Urban Development (HUD). National and local governments provide incentives and cash assistance to developers to build new affordable housing or rehabilitate older apartment buildings or other projects and offer housing at rates deemed affordable for the area.

Currently, HUD has three affordable housing programs. They are

1. HOME. Provides grants to state and local governments to fund their programs to meet the housing needs of low-income and very low income families.
2. SHOP. Provides funds to nonprofit organizations to acquire home sites and develop or improve the systems for delivery of sweat equity and volunteer-based homeownership programs for low-income families.
3. HOZ. Provides funds for communities to reclaim vacant and blighted areas and create home ownership zones of mixed income, pedestrian friendly neighborhoods.

after acquired property clause A clause in a mortgage that "scoops up," as additional collateral, property acquired after the original loan. The intent is to protect the lender in case the borrower has a defective title to the property at the time of the loan, but later cures those defects and gains full legal title. It is also intended to gain a security interest in contiguous land purchased later, and having some practical relationship to the mortgaged land. (In practice, the clause is usually buried in the fine print and allows lenders to increase the value of their collateral when that was never the original intent of the parties.)

after-tax cash flow A financial analysis of an income-producing property to determine cash benefits to the owner after paying all expenses, mortgage payments, and taxes, and after deducting amounts that must be taken into income for tax purposes, but which have not yet been collected. If the tax savings from depreciation or other tax shelters will result in tax losses, thus reducing taxes that must be paid on other income, then those savings are added back in, just as if they were additional income. The intent is to discover the amount of money that can be deposited in the bank at the end of each year.

Analysis of a Property Management Company for One Year

Financial Items	Profit	Cash Flow	After-Tax Cash Flow
Total billings	$80,000	$80,000	$80,000
Outstanding receivables as yet unpaid	N/A	(22,000)	(22,000)
Labor expenses	(35,000)	(35,000)	(35,000)
Office equipment depreciation	(4,000)	N/A	N/A
Loan principal payments	N/A	(6,000)	(6,000)
Loan interest payments	(1,200)	(1,200)	(1,200)
Net taxable income	39,800	N/A	N/A
Taxes on income	(9,154)	N/A	(9,154)
Net cash flow	N/A	15,800	N/A
Net cash flow after taxes	N/A	N/A	6,646
After-tax income	$30,646	N/A	N/A

N/A = not applicable.

after-tax equity yield Methods of financial analysis for an equity position in real estate, being the net return rate on an investment after deducting expenses, interest, and taxes.

> **Example:** *An investor buys a property with $100,000 down (equity) and $400,000 in financing. The investor receives $7,000 in cash flow each year, after paying income taxes on money earned from the investment. After 5 years, the investor sells the property and receives $150,000 after deducting mortgage balance, taxes, and sale costs. The investor received a return of the original $100,000 and a sale profit of $50,000 upon sale, plus the $35,000 received over the course of 5 years, for a total of $85,000.*

After quantifying the various components, one then calculates yield by using any of several formulas, such as cash-on-cash and internal rate of return.

after-tax income Income after deducting taxes. After-tax income is not the same thing as after-tax cash flow. The major difference between the two will usually occur because depreciation is a deduction from income but not cash flow. You don't write a check for depreciation. The other major difference arises because you write a check for mortgage principal payments, which reduces cash flow, but you can't deduct it, so it does not reduce taxable income.

Difference between After-Tax Income and After-Tax Cash Flow		
	After-Tax Income	**After-Tax Cash Flow**
Total rents	$10,000	$10,000
Operating expenses	(1,000)	(1,000)
Depreciation	(1,500)	N/A (not a cash item)
Mortgage interest	(1,000)	(1,000)
Mortgage principal	N/A (not deductible)	(500)
Subtotals	6,500	7,500
Taxes	(1,820)	(1,820)
Final number	$4,680	$5,680

N/A = not applicable.

after-tax proceeds from resale The amount of money left for the investor upon a sale after deducting all sale costs and taxes. This is the money available for reinvestment in another property.

agency A relationship in which the principal gives an agent the right to act on the principal's behalf and to exercise some business judgment and discretion. Agents owe very high degrees of loyalty, good faith, and confidentiality to their principals, often expressed as fiduciary obligations. Except for the agency coupled with an interest, agency relationships automatically terminate when the principal dies or becomes incapacitated. Agents do not have to receive payment for their services, and the agency agreement does not have to be in writing unless it relates to transferring an interest in real estate. The consequence is that many people enter into principal-agent relationships almost accidentally, being unaware of the responsibilities and obligations each has to the other.

- There is a great variety of agency relationships that arise in a number of ways. All states have statutes regulating real estate agents and defining their duties and responsibilities, but this is by no means the exclusive method of defining the relationship or its obligations.
- Agency by estoppel arises when a principal allows someone to engage in such activities that the public is justified in believing the person is acting as an agent, even if the person had no such authority. This becomes important when someone makes commitments he or she had no authority to make, and an innocent third party, relying on those commitments, suffers an injury. The principal will not be allowed to avoid the commitment by claiming the supposed agent had no authority, because the law will impose an agency by estoppel.
- Exclusive agency is a real estate sales relationship in which the owner of property grants a particular agent the exclusive right to market the property and secure buyers, but the owner retains the right to sell the property himself or herself and pay no commission at all. Contrast with an open listing, in which the owner agrees to pay a commission to any real

estate professional who brings a buyer to the closing table. Contrast also with an exclusive right to sell agreement, in which not only does the agent have an exclusive agency, but even if the owner sells the property, the agent receives a commission.

- General agency occurs when the agent is empowered to do all acts in connection with a particular trade, business, or employment. Contrast with special agency, in which the agent is authorized to conduct a single transaction or series of transactions not involving a continuing relationship. Real estate agents are special agents.
- Agency by ratification arises when one purports to act on behalf of a principal, without true authority, but the principal later learns of the act, ratifies it, and agrees to be bound. Requires some proof that the principal made a conscious decision to ratify the act. Contrast with agency by estoppel, in which the principal becomes bound because of his or her negligence, not because of any conscious decision.
- Agency coupled with an interest is a special relationship that arises when the agent also has an interest in the property with which he or she is dealing. This agency will not automatically terminate upon the death of the principal.
- Types of real estate agency:
  - A listing agent represents the seller of a property.
  - A selling agent works with the buyer, but may be a subagent of the seller or an agent of the buyer. Real estate agents must disclose which party they are representing, before someone accidentally reveals any confidential information.
  - A dual agent is supposed to represent both the buyer and seller, but this is virtually impossible for one person to do. The status arises most often when one real estate agent in an office represents the seller and another real estate agent in the same office represents the buyer; then the broker is technically considered a dual agent. In such situations the broker must take care that each agent not reveal confidential information to the other.
  - A transaction agent is technically no agent at all, but is simply a facilitator who uses superior knowledge of real estate customs and practices to assist buyers and sellers.

agency disclosure State laws that require agents to disclose which party to a transaction they are representing. Some states also require agents to disclose all agency relationships offered by their firm.

agent One who acts on behalf of a principal in an agency relationship. See *agency* for an extended discussion.

aggrieved party A party who has suffered a wrong or an injury; one who has a grievance or a complaint against another.

agreed boundary A doctrine that allows adjoining landowners to agree regarding the location of the true boundary line between themselves, if the line is in doubt. An oral agreement as to the location of the true boundary line is usually enforceable, despite statute of frauds laws that require all contracts relative to real estate to be in writing. In contrast, an oral agreement to compromise a boundary line, perhaps to "split the difference" and establish it someplace in the middle between two conflicting opinions, must be in writing to be enforceable.

agreement of sale Typically refers to any real estate sales contract. In a few states, however, the term refers specifically to a type of seller financing also called a bond for title, land sale contract, or contract for deed. In that instance, the seller retains legal title to the property until the purchaser has made all payments over the term of the financing period. At the end, if there has been no default, the seller executes a deed to the buyer. This device is often used in high-risk financing situations because it can often avoid legal protections given to the buyer in the event of foreclosure or bankruptcy.

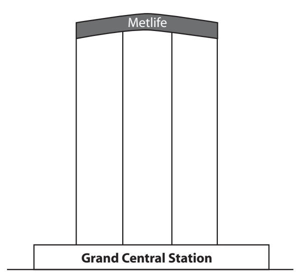
Agricultural Foreign Investment Disclosure Act A law requiring foreign persons with an interest in more than one acre of agricultural land to report their ownership to the U.S. Secretary of Agriculture, using form FSA 153. The law is only one of a number of mechanisms for monitoring foreign investment in the United States, its effect on pricing Americans out of the market, and its concentration of critical resources into foreign hands. (For more information, go to the U.S. Department of Agriculture Web site www.usda.gov and search for "FSA 153.")

agricultural use exemption In ad valorem taxes, an exemption that allows agricultural land to be valued at its current usage, rather than the possibly much more expensive highest and best use valuation. Oftentimes, the appraised value is then further reduced by a certain percentage to reach an assessed value, upon which the taxes are based. (Many say this is done as an incentive to maintain green spaces and agricultural land rather than developing it in order to generate money to pay extremely high real estate taxes. Others say the exemption is a result of powerful agricultural and timber lobbies.)

AIDS Acquired immunodeficiency syndrome. Persons who are HIV-positive, or who have AIDS, are protected from discrimination by the Americans with Disabilities Act (ADA) and other federal and state legislation. This extends to decisions to buy, rent, or sell. Further, in many states it is considered a violation of privacy to reveal that a former tenant or owner was HIV-positive or suffered from AIDS.

AIDS Housing Opportunity Act Legislation passed in 1990 to provide state and local governments with the resources and incentives to devise long-term comprehensive strategies for meeting the housing needs of persons with AIDS and the families of such persons.

air rights Historically, property owners owned to the center of the earth and to the top of the heavens, which included the right to all the air above the property and the right to exclude trespassers from that air. Until the invention of aircraft, the matter typically arose only in disputes over the right to remove tree limbs extending over one's property. Today, aircraft constantly trespass into property owner's air space and violate their air rights. As an accommodation to modern technology, courts allow reasonable trespasses to air rights. Airports and governments frequently purchase air rights adjacent to an airport, called avigation easements, to provide glide paths for aircraft. (Because of the scarcity of prime real estate near city centers, many local governments are investigating and implementing plans to lease air rights above transit hubs to developers, for building hotels and other such projects.)



The 58-story MetLife building in New York City is built in air rights above Grand Central Station

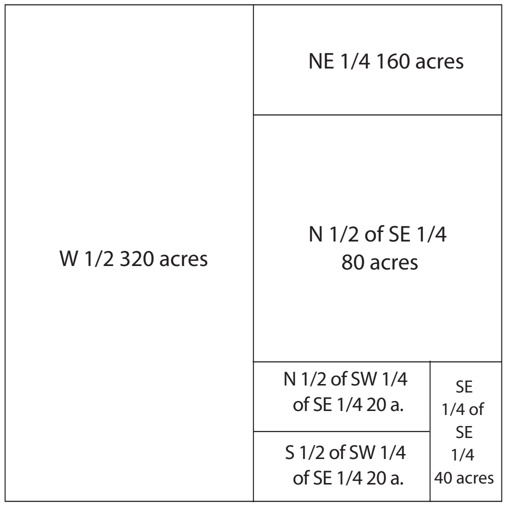
air space A three-dimensional slice of property above ground level. People who own condominiums own the rights to a specific air space.

ALDA See *Asset Conservation, Lender Liability and Deposit Insurance Act of 1996*.

alienation The act of transferring ownership or some partial interest in real property from one person to another. Voluntary alienation occurs when one executes a deed or a lease. Involuntary alienation occurs when there is a foreclosure, tax sale, or condemnation.

alienation by devise Occurs when property passes by virtue of a will, and alienation by descent occurs when it passes by intestate succession in the absence of a will.

aliquot parts subdivision Method of describing large parcels of lands as being entire sections, or regular percentages of sections. Under the public land survey system employed in most southern and western states, the states were divided into townships containing 6 square miles each. Townships were subdivided into 36 sections, and each section had 640 acres. Smaller parcels are described in terms such as quarters or halves of sections. All townships and sections are numbered, so it is fairly easy to identify a particular parcel of land by reference to its section township number, section number, and then its quadrant within the section.



Subdividing a Section

alley A path between buildings or behind buildings, usually with walls on both sides.

alligator property Derogatory slang term referring to a property with negative cash flows that eat up large amounts of investor cash.

all-inclusive deed of trust A purchase money deed of trust which is secondary to the seller's deed of trust to its own lender, which remains in place rather than being paid off at the time of sale. Now largely extinct because almost all commercial lenders have loan clauses allowing them to accelerate the note and demand all sums due immediately when a sale occurs. As a result, it is now virtually impossible to sell property without paying off the first mortgage or deed of trust, unless one engages in some type of fraud in order to prevent the lender from discovering the property has been sold. (Similar to a wraparound mortgage, but used in states that employ deeds of trust rather than mortgages.)

allodial system A system of real property law in which individuals may fully own all the rights associated with property and dispose of that property as they wish. The system had been evolving for many centuries, but the theory and the term were first clearly articulated by Thomas Jefferson in 1774, when he argued against an attempted land grab by King George III and used the theory to provide one of the supports for the American Revolutionary War. Contrast the allodial system with the feudal system, in which the sovereign owned all land and could grant usage rights to others, but those rights were revocable at will.

allowance An accounting term used to describe entries on a profit and loss statement for expenses that might become necessary in the future. Examples include an allowance for bad debt, in which a certain percentage of income is deducted because of the likelihood it will be uncollectible.

Alpha Sigma Gamma A national real estate honorary for college students participating in real estate education programs. It is sponsored by the American Real Estate Society (www.aresnet.org/ASG/index.htm).

all-risks policy An insurance policy that covers all perils except those specifically excluded in writing. Mortgage lenders typically require an all-risks policy on their collateral.

alluvium The material deposited on land by virtue of the process of accretion. The accretion process occurs when rivers or other waters deposit silt and mud on land, and thus create more land; the silt and mud making up the new land is called alluvium.

ALTA See *American Land Title Association*. The acronym is usually pronounced as a word—"all tuh"—and used to describe a particular type of survey or other requirements imposed by the lender at a real estate closing, for example, "The mortgage lender will require an ALTA survey." Although this expression is common, there is no such thing as "an" ALTA survey. There are various ALTA requirements for a survey, some or all of which might be demanded by a lender.

alterations Physical changes to a property. Tenants are usually prohibited from making any alterations to the leased property. Disputes arise over whether something constitutes an alteration, or mere decoration or even repair.

alternative investments See *specialty investments*.

alternative minimum tax Tax reform enacted in 1969 as a result of the increasing financial burden of the Vietnam War. It was designed to impose a flat tax upon wealthy individuals who used all available tax shelters and loopholes in order to avoid paying any taxes at all. The treasury secretary at the time, Joseph Barr, warned against a taxpayer revolt once it became widely known that the country had 155 citizens who made over $200,000 per year but paid no income taxes at all, and 20 of them were actually millionaires! His predictions were accurate; more people wrote their congresspersons to complain about the 155 "tax cheats" than wrote to complain about the Vietnam War.

To remedy the situation, Congress revised the Internal Revenue Code so that complex calculations must be performed as if certain tax preference items were not deductible and then a minimum tax imposed on that figure so that "wealthy" individuals would pay their fair share of the tax burden. The problem with the system is that it is not indexed for inflation, so a 1969's wealthy individual is today's typical two-income middle-class family. The New York Times predicts that, by the year 2010, nearly 30 million taxpayers will have to pay the alternative minimum tax. There is increasing pressure to abolish the tax entirely, or to revise it to provide relief for middle-class Americans.

alternative mortgage instrument Any mortgage other than a fixed-rate, fixed-term, fully amortizing mortgage.

alternative workspace Various concepts relating to novel uses of space, including:

- Telecommuting. Working at home or on the road, with a computer network and possibly video links to a central office.
- Hoteling. Using office space on an as-needed basis via reservations, like a hotel room.
- Hot desking. In which telecommuters come into the office and use any available office or cubicle, without the need for reservations.
- Office sharing.
- Open office plans.

amendment A change to an agreement; an attachment added after contract execution in order to modify or expand upon the original contract.

amenities Particular features that add to the value of a property, such as a whirlpool tub and steam shower in a house, or swimming pool and tennis courts in a condominium project.

American Bankers Association A trade organization for officers of commercial banks (www.aba.com).

American Institute of Architects A professional association for architects, designers, and developers (www.aia.org).

American Institute of Real Estate Appraisers A professional organization formerly associated with the National Association of REALTORS®. It merged with the Society of Real Estate Appraisers in 1991 to form the Appraisal Institute (www.appraisalinstitute.org). It awards two designations, the MAI (Member, Appraisal Institute) and SRA (Senior Residential Appraisal) to members who have completed rigorous experience and testing requirements. In common parlance, an MAI appraisal, being one performed by someone with the MAI designation, is supposed to be more accurate and more reliable than one prepared by a licensed appraiser without the MAI designation.

American Land Title Association An association founded in 1907 as the trade association for the abstract and title insurance industry (www.alta.org).

American Motel Hotel Brokers Network An association for real estate brokers who specialize in hotels, motels, resorts, casinos, bed and breakfasts, and assisted living facilities (www.amhbnetwork.com).

American National Standards Institute, Inc. Founded in 1918, the organization (www.ansi.org) promulgates and oversees the implementation of a wide variety of standards, from acoustical devices to building measurements to livestock production. It also accredits programs that assess conformance to the ISO 9000 (quality) and ISO 1400 (environmental) management systems.

American Planning Association A professional organization of regional and urban planners (www.planning.org).

American Real Estate and Urban Economics Association An organization of scholars and practitioners concerned with the economic analysis of real estate activities. The association publishes Real Estate Economics, the oldest academic journal concentrating on the real estate industry. The organization's Web site, www.areuea.org, includes a searchable database of article abstracts.

American Real Estate Society Describes itself as an "association of real estate thought leaders… dedicated to producing and disseminating knowledge related to real estate decision making and the functioning of real estate markets." Membership is open to anyone with an interest in real estate research. The society's Web site is www.aresnet.org.

American Society of Appraisers A professional organization of appraisers (www.appraisers.org). It offers testing and accreditation in all appraisal disciplines, including

- Appraisal review and management
- Business valuation
- Gems and jewelry
- Machinery and technical specialties
- Real property
- Personal property

American Society of Farm Managers and Rural Appraisers Founded in 1929 as an association of farm managers; it added rural appraisers in 1936. It confers the designation ARA (Accredited Rural Appraiser). The organization's Web site is www.asfmra.org.

American Society of Home Inspectors (ASHI) A professional organization for home inspectors, founded in 1976. It is North America's oldest and largest professional society of home inspectors. The organization's Web site is www.ashi.com.

American standard Shorthand for measurement methods used by the Building Owners and Managers Association and adopted by the American National Standards Institute Inc. (ANSI) so that there is uniformity in measuring and calculating office space.

Americans with Disabilities Act (ADA) A federal law that grants civil rights protections to individuals with disabilities. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local government services, and telecommunications.

- Real estate: The Act is most relevant in its provisions regarding public accommodation. Responsibility for compliance is placed on both landlords and tenants, as well as other property owners. Many commercial leases allocate the burden of ADA compliance so that the tenant must pay for any alterations or improvements necessary to bring a property into compliance.
- Places of public accommodation: These include a wide range of entities, such as restaurants, hotels, theaters, doctors' offices, pharmacies, retail stores, museums, libraries, parks, private schools, and day care centers. Private clubs and religious organizations are exempt.

- Accessibility for existing properties: Steps must be taken to remove barriers, if it can be done easily and without much expense. The evaluation of the expense depends on the size and financial strength of the entity.
- Accessibility requirements when a property undergoes alteration or renovation: For example, if during renovations a doorway is being relocated, the new doorway must be wide enough to meet the new construction standard for accessibility. When alterations are made to a primary function area, such as the lobby of a bank or the dining area of a cafeteria, an accessible path of travel to the altered area must also be provided. The bathrooms, telephones, and drinking fountains serving that area must also be made accessible. These additional accessibility alterations are only required to the extent that the added accessibility costs do not exceed 20 percent of the cost of the original alteration.
- Accessibility in new construction: The ADA requires that all new construction of places of public accommodation, as well as of "commercial facilities" such as office buildings, be accessible. Elevators are generally not required in facilities under three stories or with fewer than 3,000 square feet per floor, unless the building is a shopping center or mall; the professional office of a health care provider; a terminal, depot, or other public transit station; or an airport passenger terminal.
- Litigation: Private individuals may bring lawsuits to obtain injunctive relief to force compliance with the ADA and recover their attorneys' fees for the litigation, but may not obtain money damages. Citizens may also file complaints with the United States attorney general, who is authorized to bring lawsuits in cases of general public importance or where a pattern of discrimination is alleged. The suit can ask for money damages and civil penalties.
- The official ADA Web site is www.usdoj.gov/crt/ada/.

AMI See *alternative mortgage instrument*.

AML See *adjustable mortgage loan*.

amortization (1) In mortgages, the gradual payment of a loan, in full, by making regular payments over time of principal and interest so there is a $0 balance at the end of the term. (2) In accounting, refers to the process of spreading expenses out over a period of time rather than taking the entire amount in the period the expense occurred. For example, some real estate closing expenses may be deducted on one's taxes in the current year, but others must be amortized over the life of the mortgage loan and only a small percentage deducted each year.

amortization schedule A report that usually shows the principal and interest allocation of each monthly payment during the first year, the total principal and interest paid in each subsequent year, and the total interest that will be paid over the life of a loan. Download a template for creating loan amortization reports by going to the Microsoft Excel Web site at http://office.microsoft.com/en-us/templates.

Loan principal amount	$175,000.00	Annual loan payments	$13,971.36
Annual interest rate	7.000%	Monthly payments	$1,164.28
Loan period in years	30	Interest in first calendar year	$12,193.68
First year of loan	2007	Interest over term of loan	$244,140.80
First month of loan	January	Sum of all payments	$419,140.80

Year	Month	Beginning Balance	Payment	Interest	Cumulative Principal	Cumulative Interest	Ending Balance
2007	Jan	$175,000.00	$1,164.28	$1,020.83	$143.45	$1,020.83	$174,856.55
	Feb	$174,856.55	$1,164.28	$1,020.00	$287.73	$2,040.83	$174,712.27
	Mar	$174,712.27	$1,164.28	$1,019.15	$432.86	$3,059.98	$174,567.14
	Apr	$174,567.14	$1,164.28	$1,018.31	$578.83	$4,078.29	$174,421.17
	May	$174,421.17	$1,164.28	$1,017.46	$725.65	$5,095.75	$174,274.35
	June	$174,274.35	$1,164.28	$1,016.60	$873.33	$6,112.35	$174,126.67
	Jul	$174,126.67	$1,164.28	$1,015.74	$1,021.87	$7,128.09	$173,978.13
	Aug	$173,978.13	$1,164.28	$1,014.87	$1,171.28	$8,142.96	$173,828.72
	Sep	$173,828.72	$1,164.28	$1,014.00	$1,321.56	$9,156.96	$173,678.44
	Oct	$173,678.44	$1,164.28	$1,013.12	$1,472.72	$10,170.08	$173,527.28
	Nov	$173,527.28	$1,164.28	$1,012.24	$1,624.76	$11,182.32	$173,375.24
	Dec	$173,375.24	$1,164.28	$1,011.36	$1,777.68	$12,193.68	$173,222.32

Year	Beginning Balance	Payment	Principal	Cumulative Principal	Cumulative Interest	Ending Balance
2008	$173,222.32	$13,971.36	$1,906.07	$3,683.75	$24,258.97	$171,316.25
2009	$171,316.25	$13,971.36	$2,043.97	$5,727.72	$36,186.36	$169,272.28
2010	$169,272.28	$13,971.36	$2,191.73	$7,919.46	$47,965.98	$167,080.54

anaconda mortgage A mortgage containing a clause saying it secures the debt originally intended by the parties, and all future debts that may become due and owing in the future. Such clauses are sometimes called dragnet clauses or Mother Hubbard clauses. The effect is that a borrower with multiple loans—real estate, automobile, line of credit, checking account overdraft protection, business—may find that the lender will require all sale proceeds when the property is sold, even though the borrower might have substantial equity under the terms of the specific note originally secured by the mortgage. Debtors find themselves squeezed to death, like being encircled by an anaconda snake. The courts disfavor such clauses and usually refuse to enforce them unless there is some relationship among the debts and some specific reference in later loan documents to the earlier anaconda clause. Despite that, it is recommended that you ask mortgage lenders to delete the clause from their instrument before you sign.

anchor tenant A major department store or chain store located in a shopping center so as to attract customers who will then shop at the smaller, satellite stores; sometimes referred to as a traffic generator or magnet store.

- Because of the critical importance of that traffic to the smaller tenants, wise shopping center owners in a position to negotiate terms will prohibit the anchor from going dark, meaning vacating its space. Otherwise, the anchor could move to a more desirable location, continue paying the rent for the old property, but effectively cause most of the other tenants to go out of business and default on their leases because of the lack of traffic. Unfortunately, important anchor tenants usually have the clout to refuse to sign a lease with such terms.
- Anchor tenants often reserve the right to dictate the selection of the satellite tenants and to prohibit ones which might be incompatible with their core philosophies (such as liquor stores) or who might compete with their merchandise sales.
- A related term is shadow anchor, used when a small shopping center wants to communicate that an important traffic generator is next door or directly across the street. An ad might read, "Subject property shadow anchored by Wal-Mart to the east and Target to the west."

ancient lights doctrine Early English doctrine holding that one could not build a structure so as to block the sunlight from a neighbor's window. Despite the abundance of available land in this country, Americans love of high-rise architecture, coupled with a general unwillingness to expand private property rights to contiguous spaces, means that the concept never really caught on here. One exception occurs when a neighbor builds a spite fence for a malicious purpose to obstruct light; the courts will order removal of the fence. Recently, some courts are revisiting the doctrine and allowing application, especially as it relates to the use of solar-powered equipment. Such courts reason that public policy now disfavors unbridled development and favors use of alternative energy sources.

ancillary tenant A shopping center tenant that occupies smaller space and is less important than an anchor tenant. See *satellite tenant*.

angel investors See *venture capital*.

animal unit A unit of measurement indicating the ability of land to support range animals. Generally, a 1,000-pound animal grazing 26 pounds of dry forage per day (a mature cow or equivalent) is equal to one animal unit. Livestock grazing permits are usually expressed in terms of animal units per area or total animal unit months.

annexation The process of joining property to another. Arises in two contexts: (1) Personal property is annexed to real property, becoming a part of it, and must remain if the property is sold or if a leasehold interest comes to an end. (2) Local governments expand their jurisdictional limits and tax bases by annexing property. The process is usually accomplished through local ballot and is generally hotly contested by groups of property owners who do not want to lose their independence or see an increase in property taxes.

annual bumps Slang for annual increases in such items as rent or operating expenses.

annual cap An agreed-upon limit on the amount an adjustable-rate mortgage may increase the interest rate each year. Consumer mortgages usually have annual caps; commercial mortgages usually do not.

annual debt service The total of all principal and interest payments made over the course of a year. This figure provides one of the analytical tools for mortgage lenders of income-producing properties, who compare net annual income of the property to annual debt service on the proposed mortgage to arrive at a debt service coverage ratio. Acceptable ratios depend on the particular industry and on lending market conditions at the time.

annual mortgage constant The amount of annual debt service compared to the principal amount of a loan and then expressed as a dollar amount.

$$\text{Annual debt service} \div \text{Mortgage principal} = \text{Annual mortgage constant}$$

The constant tells you the total principal and interest payments per year per $100 of debt. (Before the widespread availability of simple financial calculators and computer spreadsheet templates, figures obtained from annual mortgage constant tables were the only quick and reliable way to calculate mortgage payments.)

annual percentage rate (APR) Usually different from the quoted interest rate or face rate on a promissory note, the annual percentage rate is a creation of the federal Truth in Lending Act, which requires that certain loan expenses be treated as if they were additional interest paid over the life of the loan, and then a new interest rate calculated based on that assumption. The intent was to force standardization in calculating the cost of obtaining credit, so that consumers could shop wisely and make informed decisions without fear of hidden charges making credit more expensive than anticipated. In reality, there is no real consensus or practical guidance about the necessity to include or ability to exclude many loan charges from the APR calculations, resulting in continued widespread confusion about the cost of credit.

Annual Percentage Rate	Finance Charge	Amount Financed	Total of Payments
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you on your behalf.	The amount you will have paid after you have made all payments as scheduled.
8.69%	**$227,087**	**$125,000**	**$352,087**

Sample disclosures required by the Truth in Lending Act for a $125,000 loan for 30 years at a quoted interest rate of 7.25% but a higher APR because of prepaid interest points and other charges

annuity A sum of money received on a regular basis as one of a series of fixed payments. Real property is sometimes sold in exchange for a private annuity. The buyer guarantees a fixed monthly income to the seller for the seller's lifetime. The seller, of course, is gambling he or she will live much longer than anyone could expect, and thus ultimately receive far more than the property was worth.

The buyer is gambling that the seller will die sooner as opposed to later, and the buyer will have a windfall. Wise sellers will include a clause guaranteeing a minimum term for payments, even if they must be made to their estate or heirs. See *advance payment annuity* and *ordinary annuity*.

annuity due See *advance payment annuity*.

anticipation, principle of In appraisal, the concept that the value of property today is equal to the value of future income, discounted to present value. Discounting rests on the assumption that the right to receive $1 in the future is not worth $1 today, but something less than $1.

anticipatory breach An affirmative statement or action indicating that a party has no intention of honoring his or her contractual commitments. This is important because one cannot ordinarily bring a lawsuit until there has been an actual breach of a contract. For tactical or other reasons, it may be important to avoid delays. If there has been an anticipatory breach, the aggrieved party may bring suit immediately.

antideficiency legislation Laws in some states that protect consumers from deficiency judgments after foreclosure of a purchase-money mortgage on residential real estate. The lender may take the real property in satisfaction of the debt. If the property is worth less than the debt at that time, the lender suffers the loss and may not sue the borrower for the difference.

antitrust laws State and federal laws designed to encourage competition and discourage or prohibit monopolies. Relevant in the real estate context because of the somewhat monopolistic power of local real estate boards, their ability to admit or exclude members, the possibility of de facto (informal) price fixing relative to real estate commissions, and their control of the Multiple Listing Service® database of properties offered for sale. This is an exceptionally complex area of law. (For more information, visit the Department of Justice Web site at www.usdoj.gov/atr/overview.html and the National Association of REALTORS® antitrust pages at www.realtor.org/libweb.nsf/pages/fg704.)

APA See *American Planning Association*.

apartment (building) A building with multiple residential tenants.

APFO See *adequate public facilities ordinances*.

APN See *assessor parcel number*.

APP Shorthand for appreciation.

appeals board A local board empowered to overturn decisions of a permitting, zoning, taxing, or other regulatory authority. Before embarking on any possibly contested activity in these areas, such as a zoning change request, it is extremely important to determine the name and requirements of the correct appeals board, should it become necessary to ask for reversal of a decision. Many boards have very limited and technical grounds for appeal that, if known in advance, can be factored into tactical decisions at the level below. In addition, the time limits for filing appeals are generally extremely short.

application fee A fee charged by a lender, ostensibly for the time and trouble involved in processing a loan request, analyzing available data, and calculating what terms and conditions to offer. In reality, this view is a holdover from the days when consumers went to lenders, hat in hand, to plead for money. In today's very competitive lending market, where virtually every television show includes at least one mortgage lender as an advertiser, it is ludicrous to think that a consumer would pay someone for the opportunity to review a loan request. This fee will usually be waived upon request; it is simply another source of profit for the lender.

apportion To divide into parts. Co-owners of property may decide to apportion maintenance costs among themselves, according to the percentage of ownership enjoyed by each. Buyers and sellers usually apportion real estate taxes so that the portion earned by local government before closing, but not yet paid because not yet due, will be paid by the seller in the form of a credit against the purchase price. When the property tax bill is later received by the buyer, he or she will pay the entire bill in full, but will have already received the equivalent of reimbursement through the credit at closing.

apportionment Division into parts. Typically used when deciding how to allocate expenses relative to oil and gas leases, and when deciding that portion of the income of a company or utility that was earned in a particular state and thus subject to state income taxes. See *apportion*.

appraisal The process of developing an opinion about a property's value. That opinion is supposed to reflect what a willing buyer would pay a willing seller after reasonable exposure to the marketplace, with neither buyer nor seller operating under any sort of duress or pressure. An appraisal is generally required when property is financed, and should be required before a real estate agent attempts to market anything significantly different from properties commonly and frequently sold in the marketplace. It may not be necessary to obtain an appraisal of a four-bedroom ranch house in a good school zone, but some assistance may be needed in arriving at a price to market an 11,000 square foot ski-lodge-type home in a small town.

- There are three common approaches to estimating the fair market value of a property. They are comparison, cost, and income.
- The comparison approach to appraisal seeks to obtain information about recent sales of comparable properties. It would be highly unlikely for the properties to be identical, so the appraiser will make adjustments in the sale price of the other comparable properties—called comps for short—in order to calculate what the sale price might have been if it were identical to the subject property. For example, if the subject property had no garage, but the comp had a two-car garage, the appraiser might subtract $50,000 from the sale price of the comp. The appraiser might then add $30,000 because the subject property has a finished attic providing more livable square footage, and another $15,000 because the subject property is brick while the comp is wood frame needing new paint. A residential appraiser will typically use three comps, commercial appraisers will employ more because it's generally difficult to find truly comparable properties, resulting in a large number of adjustments. The more adjustments, the more likely error will creep into the calculations. At the end of the process, the appraiser will have a value based on the comparison approach.

- Cost approach. This approach uses an estimate of the reproduction or replacement cost of the improvements, less depreciation, plus land value. The reproduction cost is the amount necessary to build exactly the same building. Replacement costs are those necessary to build an improvement with substantially the same usefulness using today's materials and techniques, but not necessarily the same exact characteristics.
- Income approach. This approach assumes that the value of the real estate is directly related to the value of the income generated by that real estate, such as shopping centers, apartments, and office buildings. The appraiser will calculate a net operating income (NOI) for the property by taking all possible income over the course of a year, and then subtracting operating expenses, insurance, real estate taxes, reserves for bad debts, a certain percentage for anticipated vacancies, and sometimes a certain dollar amount for the value of the owner's management and supervision. The bottom line number, the NOI, is then capitalized by dividing it by a certain percentage. That percentage rate is supposed to reflect the return an investor would expect on his or her money taking into consideration all the variables associated with the property. Variables could include the strength of the tenants, the likelihood of default, the remaining term on the leases, the prospect of future rent increases built into the leases, the likelihood of lease renewals at the expiration of current terms, the cost of financing to purchase the property, the availability of other investment sources and their rates of return, and other such factors. If a property had an NOI of $100,000 and a capitalization rate (cap rate for short) of 10 percent, then you divide $100,000 by 0.1 and arrive at a value of $1,000,000. Increasing the cap rate to 11 percent decreases the value to $909,090. Decreasing the cap rate to 9 percent increases the value to $1,111,111.
- Integration. Sometimes the appraiser will have to employ several methods in order to account for different aspects of the property. An income-producing property might include additional acreage for future development. The appraiser would value the current improvements using the income approach, and the surplus or excess land using the comparable approach.
- Reconciliation. At the end of the analysis, the appraiser will take all methods employed, as appropriate to the property, and reconcile the differing values into one value. This will then be the appraised value of the property.

appraisal review A report that comments on the completeness and accuracy of an appraisal report. Lenders frequently employ in-house review appraisers as a check on the accuracy and honesty of third-party appraisals.

appraiser One who performs appraisals of real or personal property. The various associations and organizations for real estate appraisers include:

- Appraisal Institute (www.appraisalinstitute.org). Offers the designation MAI, among others.
- National Association of Independent Fee Appraisers (NAIFA) (www.naifa.com). Founded in 1961.

- National Association of Master Appraisers (NAMA) (www.masterappraisers.org). Founded in 1982. It offers three designations: Master Residential Appraiser; Master Farm and Land Appraiser, and Master Senior Appraiser.
- National Association of Real Estate Appraisers (NAREA) (www.iami.org/NAREA/home.cfm). Founded in 1966.
- National Association of Review Appraisers and Mortgage Underwriters (NARA/MU) (www.iami.org/NARA/home.cfm). Founded in 1975.
- National Society of Real Estate Appraisers (www.nareb.com/affiliates/society_appraisers.shtml).
- American Society of Farm Managers and Rural Appraisers (www.asfmra.org).

appreciation The process of increasing in value. As a practical matter, although the IRS allows taxpayers to depreciate real property improvements as if they were becoming less valuable over time and will eventually be worthless, real property generally appreciates over time with proper maintenance and repair.

appreciation return Expressed as a percentage, the return generated by the appreciation of a property or portfolio over the period of analysis.

appropriation (1) Taking private land for public use, as by condemnation. (2) Taking public property for private use, such as using water from a navigable river for irrigation purposes. (3) Legislatively designating government funds for a project.

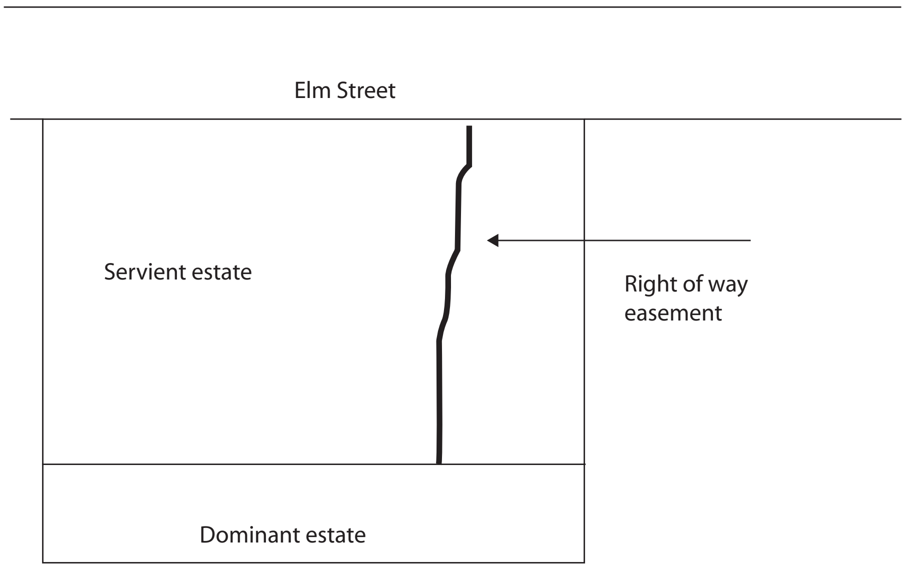
appurtenance That belonging to something of greater importance. Contracts usually describe a main structure and add a catchall for all appurtenances. (See figure on page 34.)

- In real estate law, easements, or the right to use another's property, may be appurtenant or in gross.
- If appurtenant, then the easement belongs to what is called the dominant estate (property) and passes to new owners for all time until the easement is abandoned. For example, an easement for ingress and egress over another's property is an easement appurtenant. The property that enjoys the easement is the dominant estate, and the property over which one may travel is called the servient estate. A sale of the dominant estate automatically includes a transfer of the easement, because it is appurtenant.
- Contrast with an easement in gross, which might be a right to park one's antique car at a friend's house and gain ingress and egress for purposes of using the car. This easement is personal and not tied to any particular real estate.
- This is a tricky area of the law that generally requires the assistance of a lawyer specializing in complex real estate issues. The seminal case on the subject is the 1850 English case of Ackroyd v. Smith.

APR See *annual percentage rate*.

ARA See *Accredited Rural Appraiser*.

arable Able to be cultivated.



arbitrage The simultaneous purchase in one market and sale in another market of a commodity, security, or monies, in the expectation of making a profit on price differences in the differing markets. Generally thought of as involving foreign currency exchanges, in which one enters contracts to buy euros and sell yen and hopefully make money in a moment in time when the exchange rates work out in one's favor (this is highly risky).

arbitraries Shortened property descriptions used in title plants for indexing real properties, rather than the sometimes lengthy, technically accurate, surveyor's descriptions. Also called arbs.

arbitration A method of nonjudicial or alternative dispute resolution (ADR) which long existed at common law but has recently gained renewed vigor because of the Federal Arbitration Act and the U.S. Supreme Court's pronouncements that the Act applies to all disputes involving matters in interstate commerce. Virtually every construction contract, architectural agreement, and mortgage loan document today contains an arbitration clause and is deemed to involve interstate commerce because of the nationwide impact of those industries. The American Arbitration Association maintains a Web site at www.adr.org.

The process relies upon aggrieved parties agreeing to one or more disinterested persons hearing their complaints and defenses and then coming to a conclusion establishing the rights and responsibilities of the parties and their damages, if any. In theory, at least, the arbitrators are skilled and knowledgeable in the particular field of the dispute and allowed to factor into their decisions their own knowledge and experiences. This is in contrast to the modern jury system, in which the law seeks to obtain a jury absolutely ignorant of any details of the industry or dispute, and willing to come to a conclusion based solely on the evidence presented by the lawyers.

- Pros. The process is usually much more informal than a traditional trial, allowing a leveling of the playing field when consumers attempt to represent themselves against lawyers representing the other side. In some markets, for some types of disputes, you can reach a hearing and resolution faster and more cheaply than in the court system. For others, a shortage of trained arbitrators for complex cases means the dispute might actually take longer. There are no formal rules of evidence, and the arbitrator simply factors in issues such as hearsay when deciding how much weight to give evidence, rather than excluding it entirely. Discovery is usually very limited in consumer cases so that extensive time and money is not spent searching for documents to produce, attending depositions, and other such matters. The final judgment is confidential and not publicly reported anywhere unless it is a money judgment not paid within the required time period, in which case the winner may record his or her arbitration award in the public records and attempt to enforce it.

- Cons. As a practical matter the arbitration award cannot be appealed or overturned, even if the arbitrator made obvious mistakes of law that directly resulted in a wrong decision. There are exceptions, but they are exceedingly technical, generally disfavored by appellate courts, and usually require a level of sophistication at the hearing level not enjoyed by most consumers. That is because, for most of the few allowable grounds of appeal, you must know those grounds and all their technicalities in advance and make tactical decisions at the hearing level that will preserve your rights to appeal. This lack of appellate rights was considered a trade-off for the ability to have an arbitrator knowledgeable about your field and supposedly able to reach a more fair decision than a jury. In reality, this rarely works out.

architecture The science and art of structural design and construction supervision.

Architectural and Transportation Barriers Compliance Board The former name of the Access Board.

architectural drawings Project drawings provided by the architect, typically showing the floor plan; elevations (views of the various sides of the structure); finish schedules; and details of moldings, cabinetry, doors, and other such matters necessary for the builder to order the proper materials for construction. It typically does not include engineering drawings for heating and air conditioning, electrical, audiovisual, telecommunications, security, waste management or plumbing systems, or landscaping plans and topographical details. All such plans, obtained from other professionals, are typically combined with the architectural drawings into a set of working drawings.

area A measurement of the square footage contained within certain boundaries.

ARELLO See *Association of Real Estate License Law Officials.*

ARES See *American Real Estate Society*.

AREUEA See *American Real Estate and Urban Economics Association.*

Argus A computer program widely used among real estate investors to analyze portfolio performance and purchase opportunities. It is becoming increasingly important for graduates of business schools to have working knowledge of the Argus software if they want to secure employment with large institutional owners and managers of real estate. (For more information go to Realm Web site at www.realm.com.)

ARM See *adjustable-rate mortgage.*

arm's-length transaction A transaction in which the parties have equal bargaining strength in order to protect their individual interests and are not related or involved in some other type of relationship that would tend to call into question the fervor with which they attempt to protect their interests. If the IRS determines that a sale of real estate was not an arm's-length transaction for fair market value, it may deem part of the value of the property as a gift, which could result in gift taxes.

arrears (1) Being past due on a debt. (2) Paid at the end of the period rather than the beginning. Rent is usually paid in advance, at the beginning of the month for the coming month. Interest is usually paid in arrears, at the beginning of the month for interest accrued during the prior month. Real estate taxes are usually paid in arrears.

arterial street Designed to carry traffic through an area as quickly and efficiently as possible in order to reach another destination. One might not want to locate a retail business on an important arterial street, because there would be limited ability for commuters to exit the artery and shop at the retail establishment. Arterial streets are designed for the benefit of the city as a whole, rather than the communities through which they pass. See *feeder road*.

artificial intelligence The ability of a computer program to evaluate data and make decisions according to parameters set out in the software. Automated underwriting software is a type of artificial intelligence. The increasingly popular AVM—automated valuation model—uses artificial intelligence and related property data to create appraisals for lenders and for the IRS.

artificial person A legal entity that is granted some of the rights and responsibilities of a natural person, such as corporations that may enter into contracts, partnerships that may sue and be sued, and church associations that may hold title to real estate. Almost all artificial persons enjoy the same rights and responsibilities as each other.

ASA See *American Society of Appraisers*.

asbestos A mineral fiber once commonly used for its fire-retarding and insulation properties. It was widely employed in insulation, roofing, floor tiles, household products, and appliances. After extensive studies, the Environmental Protection Agency determined that asbestos caused lung and stomach cancer in people exposed to it over long periods of time. If real property contains asbestos in it, most lenders will require removal, or a firm commitment for removal, before they will fund any loans to buy or renovate the property. Real estate agents are required to disclose the presence of asbestos on property, if known. Asbestos removal is generally accomplished by specially trained and licensed asbestos abatement contractors.

asbestos containing material (ACM) Under Environmental Protection Agency regulations, any material containing more than 1 percent asbestos. There are different regulatory requirements depending on whether the ACM is friable or nonfriable.

as-built drawing Not infrequently, the owner or contractor of a building under construction will make field modifications to the original architectural or engineering drawings. Ideally, all such modifications should be noted on one set of plans set aside for that purpose. At the completion of the project, the respective professionals will be asked to generate a new set of drawings showing the actual construction details, rather than original designs, so that future work can be planned and executed in a knowledgeable manner with reference to what already exists in the property. In the alternative, long after a building has been constructed, the owner may employ professionals to prepare plans showing all details of the building and its various systems. Both of these result in as-built drawings.

as is In its current condition without any guarantees by the seller.

as-is value An estimate of the value of real property in its current condition, which may be depressed because of necessary repairs and maintenance.

ASHI See *American Society of Home Inspectors*.

assemblage The process of putting together the purchase, or options for the purchase, of several small parcels from multiple owners in order to create a larger parcel of land. The goal is to obtain enough land for a particular development in mind, or to conduct the assemblage as a speculative venture, in order to sell the larger parcel for more money than it cost to purchase the smaller parcels. This increase in value due to the assemblage is called plottage value.

assessed value The value of real property for the purposes of calculating property taxes and other similar charges such as school taxes and fire district dues; the tax appraiser will establish a fair market value for the property. The assessed value is then frequently calculated as a specific percentage of the appraised value. Oftentimes the percentage will vary depending on the use of the property and any applicable exemptions. In some states, for example, property is assessed at 20 percent of its fair market value. Persons residing on their property, and claiming a homestead exemption, may be entitled to an assessment of 10 percent of fair market value.

Example: Assessed Value of Real Property at 310 Main Street

Appraised value	$370,000	
Assessment ratio of 10% for owner-occupied residential properties, results in assessed value	$37,000	
Tax rate of 2% of assessed value	$7,400	
Taxes due		$7,400

assessment (1) The official valuation of property for tax purposes. (2) A one-time charge made against property owners for each one's pro rata share of the expense of repairs or improvements to be enjoyed by all of them in common, such as a condo association assessment to replace a roof, or a local government assessment to pave a dirt road. (3) Determination of the value of property in a condemnation case.

assessor A public official charged with maintaining the property tax rolls and the accuracy of the appraised and assessed value of properties.

assessor parcel number (APN) A number assigned by the local assessor in order to identify a particular property. Often used in real estate contracts until a more detailed legal description can be obtained, because each parcel has its own unique APN; deemed to be more reliable than a street address.

asset Something of value. On a balance sheet or personal financial statement, assets will include the following items, typically arranged in order according to the ease with which they can be converted into cash:

- Cash and equivalents
  - Cash on hand
  - Cash in banks
  - Marketable securities
- Receivables
  - Accounts receivable
  - Less reserves for bad debts
- Furniture, fixtures, and equipment
- Fine art
- Real property
- General intangibles
  - Stock in closely held corporations
  - Intellectual property rights
  - Goodwill

When lenders examine balance sheets, they generally assume that individuals and small businesses overvalue the furniture, fixtures, and equipment and the general intangibles. Large entries for cash and equivalent assets will overcome a poor credit rating 9 times out of 10.

Asset Conservation, Lender Liability and Deposit Insurance Act of 1996 An amendment to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) made in response to mortgage lender anxiety regarding statutory language that might make lenders liable for cleanup of contaminated sites, simply by virtue of their mortgage interest or as the result of a foreclosure. The amendments protect lenders from liability, preforeclosure, unless they participated in the contamination. It also shields them after a foreclosure, but only if they sell the property at the earliest practicable, commercially reasonable, time.

asset cost recovery system (ACRS) See *accelerated cost recovery system*, which is the correct name for an outdated tax accounting methodology abbreviated as ACRS. Unfortunately, one often encounters this method erroneously described as "asset cost recovery system."

asset depreciation range (ADR) An elective depreciation method allowed by the IRS after 1970 and before 1981. It had over 100 classes of property from which to choose appropriate depreciation periods. The entire system was a hotbed of taxpayer versus IRS controversy, so it was replaced by the

ACRS system in 1981, and then by the MACRS in 1987. One still encounters the ADR in literature, but it no longer exists.

asset management The umbrella name for all phases and areas of expertise in the acquisition, management, leasing, operation, and eventual sale of real property assets.

assign To transfer one's property rights or contract rights to another. In the context of real property, an assignment is commonly used in three circumstances: (1) An investor signs a contract to purchase real property and reserves the right to assign that contract to some business entity to be created in the future, but still owned or controlled by the same investor. (2) An investor wishes to purchase property anonymously because of fears the owner will increase the asking price if he or she knew the identity of the true purchaser. As a result, the investor employs a straw man to sign the purchase contract, and the contract is then assigned to the ultimate purchaser. (3) A speculative purchaser of condominium units or other property to be built in the future will sign a purchase contract for a fixed price, in the expectation that prices will increase dramatically by the time construction is completed. At that time the speculator may then assign their (below-market price) contract to another for a substantial profit.

assignee One to whom a contract or lease has been assigned. See *assign*.

assignment of lease Transferring all rights in a lease to real property to another. Leases typically contain prohibitions against assignment without landlord approval, but the approval may not be unreasonably withheld. Reasonable grounds may include a change in the creditworthiness of the tenant, an increase in the burden placed upon the property by the new tenant because of additional parking demands, or incompatibility with other tenants such as a liquor store coming into a small shopping center of family-oriented businesses. When a tenant assigns its lease, it remains liable for the entire lease term unless the landlord agrees to a novation, which is a declaration that the old lease is void and the landlord has entered into a direct relationship with the assignee.

assignment of rents Additional collateral usually required by lenders for commercial properties. The lender may wish to take some step short of foreclosure if there is a default. By virtue of the assignment of rents, the lender may exercise its rights to contact all tenants and advise them to pay their rent directly to the lender rather than to the landlord borrower.

assignor A person making an assignment.

associate broker A real estate classification used in some states to describe someone who has obtained his or her broker's license and is thereby legally capable of heading a real estate office, but who works as a salesperson under the supervision and control of the lead broker, usually called the qualifying broker or a managing broker.

Associated Builders and Contractors (ABC) A national trade association representing contractors, subcontractors, materials suppliers, and related firms. The organization's Web site is www.abc.org.

Associated General Contractors of America (AGCA) A trade association for general contractors; established in 1918 after Woodrow Wilson expressed a need for such an organization. The organization's Web site is www.agc.org.

Association of Real Estate License Law Officials (ARELLO) This association was organized in 1929 to facilitate the exchange of information and cooperation among regulators and policy makers in the area of real property. Today, the ARELLO mission statement is to "Support jurisdictions in the administration and enforcement of real estate license laws to promote and protect the public interest." Their Web site, www.arello.org, includes a consumer section with links to consumer protection agencies and to a database for checking whether persons selected by you have current real estate licenses in their jurisdiction.

assumable loan A loan that can be taken over by a purchaser, who may then continue making payments in the same amount, at the same interest rate, for the remaining term of the loan.

History and background: Before the high interest rates and banking crises of the 1980s, most mortgage loans were freely assumable if the purchaser paid a small assumption fee. Problems arose when interest rates skyrocketed to nearly 20 percent, creating a lively market in people wishing to assume old 6 and 7 percent loans rather than obtain new purchase money loans at 20 percent. The lending industry also began to see a high percentage of non-credit-worthy purchasers, unable to obtain financing on their own, assuming loans. This all seemed good for consumers, but it was bad for lenders. Caught in the squeeze, many went under in the giant banking and savings and loan debacles of the era. To prevent future interest rate squeezes, and future underwriting disasters, lenders introduced a new loan clause called the due on sale clause. It stated that if the underlying property were sold or otherwise conveyed, the entire note would be due and payable immediately, even if it had not matured and there had never been a single default or late payment. California led the way of states antagonistic to this attempted infringement on consumer rights and outlawed the enforceability of due on sale clauses. The federal government, facing gigantic cash losses as a result of its lending industry bailouts, was strongly in favor of due on sale clauses so the current crisis would not repeat itself in the future. It passed legislation preempting states laws in the case of all federally chartered or federally insured (FDIC) financial institutions. The new law stated that due on sale clauses were enforceable and state laws to the contrary did not apply. The ability to assume mortgage loans is now effectively dead.

Today, some loans are still characterized as assumable, but the purchaser must meet all underwriting requirements necessary for an original loan, and the interest rate can usually be increased to market rates. In a true loan assumption, the original borrower remains liable on the promissory note, in addition to the purchaser of the property.

assumptions and limiting conditions A recital of the assumptions on which an appraisal is based. These typically include matters such as: the appraisal is an accurate reflection of the value of the property, but only if there are no hidden defects, there are no boundary line problems, factual information obtained from others is correct, zoning allows the current or anticipated future use, and other such matters.

at-risk rules IRS rules limiting the deductibility of some losses, which are not allowed to exceed the amount the taxpayer has at risk, meaning the total of cash contributions and liability on promissory notes. Under certain circumstances, nonrecourse loans secured by real property but not by the individual's guarantee or endorsement may still satisfy the at-risk rules. (For more guidance, go to IRS Web site www.irs.gov and download IRS Publication 925, "Passive Activity and At Risk Rules.")

attached housing Housing that is attached to each other on at least one side. Contrast with detached housing, which is best exemplified by the traditional suburban home.

attachment The legal process of seizing real or personal property for the payment of nonmortgage debts such as tax liens or judgments.

attest To witness by observation and signature, as one who attests that another has signed a real estate contract. Contrast with acknowledgment, in which the signer states he or she signed the document voluntarily, and then a notary public or other such individual affixes his or her signature and seal as evidence of hearing the acknowledgment and witnessing the signing.

attorn The act of a tenant formally agreeing to become the tenant of a new landlord, but for the same property. Usually occurs when there has been a sale or foreclosure of the leased property. The new owner will want to obtain an attornment in order to cut off defenses and claims the tenant might have against the old landlord, and to prevent the old landlord from muddying the waters by making claims for rent, even though no longer owning the real estate.

attorney-in-fact A person authorized to act for another under a properly executed power of attorney.

attorney's opinion of title The written opinion of an attorney regarding the identity of all current title owners, lienholders, and possible claimants to a particular parcel of land. Although lenders always require title insurance, which will pay off claims if the title opinion turns out to be inaccurate, many cash purchasers are content with simply the attorney's opinion of title. If other persons then assert claims in the future, the purchaser may suffer loss of the property, with the only recourse being to sue the attorney for malpractice, a difficult and expensive process and one further complicated by the general inability to find lawyers willing to sue other lawyers.

attornment See *attorn*.

attractive nuisance A concept in tort law holding that if a person creates or allows a condition to exist on his or her property that a reasonably prudent person would know presents a danger to children, then that person must take steps to protect children of tender years from the condition, especially if it is something known to be attractive to small children. Liability can also be imposed if someone creates such a condition on someone else's property or even in a public place. Examples would be a swimming pool on one's own property, a rope swing installed by a private individual over a pond in a public park, or even an old refrigerator dumped by the side of the road in a rural area, but which could trap and suffocate children inside. Many courts hold that an artificial body of water, such as a pool, is an attractive nuisance but a natural one, such as a pond, is not.

auction A sales technique in which real or personal property is offered for sale and bidders make oral offers in varying amounts until one is accepted. Frequently used for involuntary transfers of real estate, such as foreclosures and tax sales. In some states, foreclosure auctioneers must be licensed. Where property is offered by the owner voluntarily for auction sale, the fine print in the auction terms usually contains a provision for a buyer's premium. The amount of the winning bid is automatically increased by the stated amount, and that percentage is used to pay the auctioneer's fees.

automated mortgage underwriting Loan processing that is entirely or predominantly performed by computers using artificial intelligence, without human assistance or intervention. The computer has a complex set of instructions to follow depending on the data input by the consumer or by a data entry clerk, including ordering credit reports and other financial data and evaluating all borrower information against predetermined profiles for acceptable lending requirements.

automated valuation model (AVM) Originally a computerized method of estimating large numbers of property values in an efficient, if not entirely accurate, manner; frequently used by tax appraisers to periodically reappraise properties for purposes of real estate taxes. A disgruntled property owner may appeal the valuation and present evidence the computer made a mistake in that particular instance. Today, AVM artificial intelligence has progressed to the level of respectability that lenders use it to appraise property for mortgage loan purposes and the IRS uses it to evaluate a taxpayer's assets.

automatic stay A bankruptcy provision that stops all creditor actions, including foreclosures, immediately upon a debtor's filing for bankruptcy protection. There is then a breathing period during which no creditor action may take place. Afterward, a creditor may ask the court for permission to proceed, called a request to lift the automatic stay. To be successful, it must prove that neither the debtor, nor any other creditors, will be prejudiced if foreclosure or repossession is allowed to continue.

average downtime An estimate of the length of time a leasehold property will remain on the market after the expiration of one lease term and before the commencement of a new tenant's lease.

average free rent The number of months typically given as free rent in order to provide incentives for a tenant to vacate their old premises and move to new ones without being liable for double rent during the overlapping terms, or to provide competitive incentives for new tenants to rent in one building rather than another.

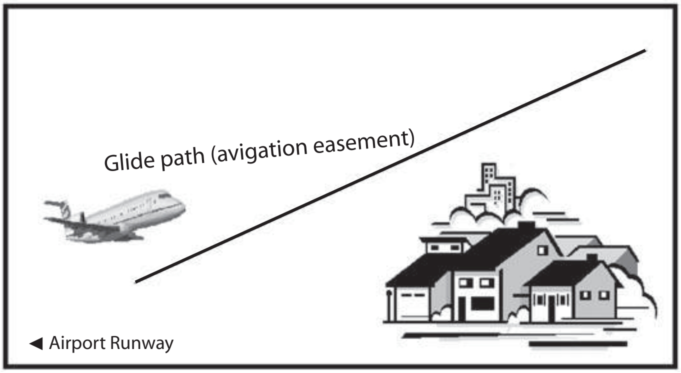
average rate of return One way of measuring an investment's profitability. To calculate, one takes the total net earnings, divides by the total number of years the investment was held, and then divides that answer by the investment's initial acquisition cost.

> **Example:** *Rainer spent $800,000 to buy an apartment building. After deducting all operating expenses, real estate taxes, and insurance, she receives $65,000 in the first year, $71,000 in the second year, $69,000 in the third year, and $70,000 in the fourth year. The total net earnings are $275,000. Divide that number by the 4 years being analyzed, to reach $68,750 as an average*

annual return. Divide $68,750 by the initial $800,000 investment to calculate the average rate of return of 8.59 percent.

Drawback: The procedure does not take into account the time value of money. The $65,000 received in the first year was more valuable than the $70,000 received in the fourth year, because the $65,000 could have been invested to earn still more money.

avigation easement An easement obtained by airport authorities, through purchase or condemnation, and used to provide clear access for low-flying aircraft on the glide path.



Avigation easement for a glide path for departing aircraft.

avulsion A sudden and perceptible loss or addition to property as a result of the action of water either taking soil from one property and leaving it on another, or by virtue of a river or other running water changing the course of its bed. The rule is that boundary lines described with reference to the midpoint of the stream will remain at the midpoint of the old stream, and not the midpoint of the new stream. This is because of the sudden nature of the change, so that people may reasonably notice and mark the location of the old stream bed as a matter of reference.

axial growth A growth pattern for cities, which typically expand outward along major arteries such as interstate highways or other controlled access roads. The population centers will appear star shaped, or like spokes in a wheel, when viewed from above.

B

bachelor apartment A small rental dwelling unit that combines living and bedroom spaces into one room (and, sometimes, kitchen space as well). (Do not confuse with single-room occupancy, which generally has shared cooking or bathroom facilities.)

back-end ratio One method of analyzing a borrower's ability to meet underwriting requirements for a home loan. This method takes into account existing long-term debt of the applicant, plus the payments on the requested loan, in order to arrive at a percentage of income that will be devoted to debt service. Lenders typically like to see ratios below 36 percent of take-home pay. Contrast with front-end ratio, which compares only the requested loan against take-home pay.

Example: Back-End Ratio

Monthly take-home pay	$3,600
Auto loan payments	$480
Mortgage loan payments	$790
Total long-term debt	$1,270
Ratio of debt to take-home pay	35.28%
Back-end ratio	35.28%

backfill In construction and excavation work, to fill something with additional dirt. When building foundation walls or retaining walls, one excavates a space large enough to build the walls and provide a comfortable work space, and then backfills with additional rock and dirt afterward.

back taxes Unpaid property taxes, which remain a lien on property even after it is sold to another; could result in a forced sale.

back-to-back lease One type of rental concession in commercial leases; encountered in markets with large amounts of vacant space on the market and no real prospect of filling the space with new entrants. As a result, landlords must resort to "stealing" tenants from each other. They will offer a back-to-back lease, agreeing to pay the tenant's rent at their old space until the expiration of the term, if the tenant will immediately vacate and move to the new space. In a strong rental market, a landlord may wish to attract a particularly desirable tenant from another building even though the landlord's vacant space could easily be filled from current market demand. In such a situation, the landlord will offer to buy out the entire current lease, paying a lump sum to the owner of the other building. The other building owner is generally motivated to accept the lump-sum payment, because he or she anticipates renting the vacant space to a new tenant fairly quickly and thereby gaining a cash windfall in the form of the buyout price.

backup contract An offer to purchase that is accepted by the seller but is contingent on a prior contract failing to proceed to closing.

bad title Title to real estate that has some defects or problems that prevent the owner from conveying the property free and clear of any liens or adverse claims.

bailment A legal relationship is which a person (bailor) surrenders control of personal property to another (bailee), but with the agreement that the goods will be returned or accounted for upon request. Bailees are not insurers of goods and are responsible only for their own negligence in carrying out the terms of the bailment agreement, not for any third-party theft or vandalism, unless the bailees specifically represented they would protect the goods against third parties. Warehouse operations are typically bailments, as are records storage businesses. Most self-storage facilities, in which consumers retain their own lock, are not bailments.

balance, principle of In appraisal, the concept that there is an ideal balance of factors for the development of real estate, such as will produce the greatest value.

> **Example:** *A 10-acre parcel may be capable of being divided into a community of small garden homes with a profit margin of $10,000 each, but the legal fees and time spent for zoning changes and the costs of street and other infrastructure improvements may decrease the total project profitability to $250,000, thus affecting the value of the land. The developer may be able to build three luxury homes, instead, for a total profit of $500,000.*

balance sheet A semi-itemized listing of all assets and liabilities of a person or a company in order to arrive at a net worth, which is the difference between the assets and the liabilities. Most lenders require a balance sheet as part of the loan application process. Short-term debt, which will be paid off in one year or less, is treated by lenders in a different manner than long-term debt when calculating their various ratios to determine loan eligibility. As a result, consumers would be well advised to separate the two types of debt when completing a balance sheet form provided by the lender.

Example:

Assets:	
Cash and equivalents	*$23,400*
Marketable securities	*87,300*
Real property, nonhomestead	*312,000*
Primary residence	*209,000*
Art and collections	*19,000*
Vehicles	*42,000*
Furniture and accessories	*48,000*
Total assets	*$740,700*

Liabilities:	
Line of credit balance	*$11,000*
Credit cards	*2,500*
Mortgages, nonhomestead	*118,000*
Mortgage, primary residence	*92,000*
Accrued and unpaid taxes	*13,000*
Total liabilities	*$236,500*
Net worth	*$504,200*
Liabilities and net worth	*$740,700*

One of the primary weaknesses of a standard balance sheet is that it does not reflect any contingent liabilities—matters which may become liabilities in the future, but then again, may simply disappear. These are things like loans guaranteed for children, the results of pending litigation, and penalties and interest that may be imposed at the end of a current tax audit. In accounting, such matters are noted in footnotes. Some mortgage application forms specifically ask about contingent liabilities, and others do not. Obviously, the rosy picture presented in the preceding example balance sheet would change markedly if the owner disclosed involvement in a multimillion dollar lawsuit for which there was no insurance coverage, and which might result in a judgment in the future.

balcony A platform that projects from a wall, usually surrounded by some sort of guard structure to prevent falls.

balloon mortgage A real estate loan with monthly payments as if the loan would be paid in full over a period of time, usually 30 years, but the entire principal balance is due in a much shorter time, usually 5 or 7 years. This is a method for lenders to offer fixed-rate mortgages at rates very competitive with adjustable-rate mortgages, but without the risk that interest rates will rise dramatically in 6 to 10 years or longer, leaving the lender with a low-interest-rate investment in a high-return world. Balloon mortgages are usually quoted as something similar to "6.5 percent interest on a 30-year am [short for amortization] with 5-year balloon." Also called partially amortized loan.

balloon payment The full principal amount due at the end of a balloon mortgage.

BANANA A derogatory term; acronym for Build Absolutely Nothing Anywhere Near Anybody. Much stronger than NIMBY—Not In My Back Yard.

band of investment An appraisal method used to arrive at a capitalization rate for the valuation of income-producing property. Appraisers determine the net operating income from a property, and then divide that figure by a number, called the cap rate or capitalization rate, in order to arrive at a property value. Conceptually, that value represents what an investor would pay to receive an income equal to that of the property. (The net operating income is fairly easy to calculate, but what cap rate do you use? There are no tables or standards. The appraiser must choose a figure that is justifiable.)

The band of investment method considers the interest rates currently available in the marketplace to finance the particular property. In commercial markets, interest rates may vary significantly depending on which lenders are trying to add what particular property types to their loan portfolios in order to achieve an optimum mix. After deciding on the property loan interest rate, the appraiser then calculates the amount of equity the purchaser would have to pay at closing, and what reasonable investors would expect for a percentage return on their equity each year. These two percentages are then blended according to the percentage of debt and percentage of equity typically seen when financing such properties. The blended number is the cap rate the appraiser will use to help determine value.

bank An institution empowered by law to receive deposits, cash checks or drafts, discount commercial paper, make loans, and issue promissory notes payable to the bearer, known as bank notes. American commercial banks fall into two categories: (1) federally chartered and (2) state chartered. Federally chartered banks come under the regulatory and auditing supervision of the United States Comptroller of the Currency. State-chartered banks come under the control of the appropriate state banking authority. Typically the FDIC will audit state-chartered banks and the comptroller's office will audit federally chartered banks.

Bank Insurance Fund The new name of the former fund of the Federal Deposit Insurance Corporation (FDIC). The FDIC is still alive and kicking, only the fund has changed names.

bank partitions Cubicles; floor-fastened room partitions approximately 5 feet high, so named because they are common in banks.

bank rate See discount rate.

bankruptcy A common expression used to mean insolvency, being a condition in which one's liabilities exceed one's assets, or in which current cash flow is not sufficient to meet current debts. As a result of the condition, the debtor may take advantage of protections afforded by the Bankruptcy Code. Immediately upon filing, the law imposes an automatic stay which prohibits all collection activities. Over time, the stay may be lifted so that collection may resume, but the law does allow a breathing spell to allow the debtor and attorney to analyze their options. The Code underwent dramatic changes in November of 2005, with the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). Bankruptcy is now a much less consumer-friendly place than it used to be, and it places greater demands on bankruptcy lawyers. Some pertinent aspects of bankruptcy law are noted here.

- Chapter 7 bankruptcy. A case brought under Chapter 7 of the Code, with a goal of liquidating all assets, paying all liabilities as far as the money will go, and then obtaining a discharge and a fresh start. Some debts cannot be discharged at all, such as judgments for money damages for fraud, payroll withholding taxes, intentional damage, domestic obligations, and other items. In addition, because of past credit card abuses with debtors maxing out their credit cards and then filing for bankruptcy, there is now increased scrutiny of purchases prior to bankruptcy. Suspect purchases will be denied discharge. Debtors requesting Chapter 7 relief must complete government-approved credit counseling before filing, and may be forced to enter Chapter 13, rather than Chapter 7, if a "means test" determines they have the ability to repay some debts over time.

- Chapter 11. Commonly called reorganization, this is designed for businesses or for individuals who exceed the financial limitations for Chapter 13 eligibility. Businesses will continue operations and propose a plan to meet their obligations, or a plan to sell the business as a going concern rather than liquidate assets. The plans usually contemplate the sale of some assets, forgiveness of some debt, and a generous repayment schedule over time. Things rarely work out well for the debtor, and the vast majority of Chapter 11 cases either result in the largest lender owning the company at the end, or the company changing its plan to one of liquidation. Just because the goal is liquidation does not mean the debtor must convert to Chapter 7; they are said to be in a "liquidating 11."
- Chapter 13. Commonly called wage earners bankruptcy, but this is misleading, because anyone with regular income from some source may take advantage of the chapter. There are financial limitations for eligibility that, if exceeded, will result in the debtor taking advantage of Chapter 11 instead of Chapter 13. The debtor must complete government-approved credit counseling before being allowed to file. Once in Chapter 13, the debtor proposes a plan for repayment of debts, with payments stretching over 3 to 5 years. At the end of the time, if all agreements under the plan have been met, and if the person completes all required financial education, the debtor receives a discharge.
- Bankruptcy and real estate:
    1. Filing stops all foreclosure activities until and unless the lender is able to lift the automatic stay and obtain court approval to proceed. In some states where a debtor may redeem property after a foreclosure sale, the bankruptcy will enable the debtor to do so by making payments, rather than by paying the full cash price ordinarily required for a redemption.
    2. Transfers of real estate within the recent past may be reversed if they are for less than full value and deemed to be a fraud against creditors, even if there was no fraudulent intent.
    3. Listing agreements to sell property may be terminated, or cancelable, depending on the chapter.
    4. Tenants may reject burdensome lease obligations and secure early termination of their leases.
    5. Commercial lenders, who typically require that collateral be held in a single-asset entity, may be able to successfully argue against a plan of reorganization and force a foreclosure.
    6. Other lenders opposed to a Chapter 11 plan of reorganization may be forced to accept it in a procedure called the cram-down.

bargain and sale deed A deed that contains only the name of the seller, the name of the buyer, a recital of consideration, a description of the property, and words of conveyance is a bargain and sale deed. In it, the seller makes no warranties regarding good title or any other matters, but simply sells to the purchaser whatever interest the seller might have had. Typically used in two situations: (1) When the seller obtained the property by law and is not in a position to make warranties because of lack of knowledge and lack of prior control. This would include deeds by administrators of estates, deeds from the IRS after a tax sale, or deeds from a lender after a foreclosure. (2) The second frequent instance is when someone is asked to sign a deed in order to clear up title defects that might or might not have given the seller some rights in the property. The seller is willing to give up any rights he or she might have but is not willing to issue any warranties that he or she owned anything at all. See *quitclaim deed*.

bargain purchase option A right granted to a lessee, typically under a personal property lease such as for office equipment, but it could be a real property lease. The right, called the option, gives the lessee the ability to buy the property, at the end of the lease term, for a price substantially less than fair market value. The inclusion of a bargain purchase option in a lease contract is an indication that the contract is really a disguised seller-financing arrangement. As a result, "rent" payments previously written off in their entirety may be disallowed by the IRS because some portion of the rent was really payment of principal on a loan. In addition, under Sarbanes-Oxley, public companies may have to post such arrangements as liabilities on the company's balance sheets, contrary to prior custom and practices.

base and meridian On May 7, 1785, Congress adopted the rectangular system of surveying properties, now called the public land survey system. It is based on a rectangular system of imaginary lines running across the country. The baselines run east and west, and the meridian lines run north and south. Properties are described by reference to the principal meridian and the baseline that controls that area.

base (expense) year In commercial leases, the year used as a measure of a tenant's obligation to pay the pro rata share of ever-increasing building expenses over time. The rent for the first year is usually calculated by the landlord so as to pay currently known building expenses and provide a profit. This is usually the base year. As expenses increase over time, the amount they exceed the expenses of the base year is the figure the landlord uses to calculate the tenant's pro rata share of the expenses.

baseline East-west lines in the public land survey system, part of the baseline and meridian line components. Each principal meridian has a baseline. Properties in the principal meridian's area are described by their bearing east or west of the meridian and north or south of the baseline.

base period The point in time that serves as a reference for calculating financial and economic data. The base period value is usually set at 1.0 or 100, called the benchmark, for purposes of comparison, and then all other periods are either greater or less than the benchmark.

base rent The minimum periodic rent specified in a lease. Additions could include the tenant's share of common area maintenance (CAM—pronounced as a word), share of building operating expenses, and percentage rent based on gross retail or food sales.

basis A tax and accounting term referring to the original acquisition cost of a property; used to determine annual depreciation deductions and eventual gain or loss upon the disposition of the property. This concept is fundamental to almost all real estate analysis and real property tax planning, and an important one to master. Some of the key concepts are

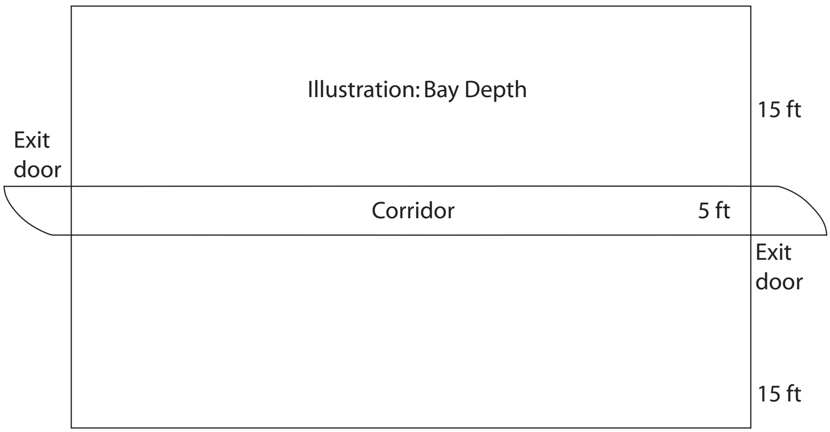
- The basis may be increased by adding some acquisition and closing costs. Many taxpayers would prefer to write off those costs as deductible expenses, but that is not allowed.
- The basis may be increased as you make capital expenditures for the benefit of the property. Usually a capital expenditure is something that adds value above and beyond the slight increase experienced when things are repaired.
- The basis is decreased each year as you deduct depreciation expenses on your taxes.
- Property acquired by gift will have the same basis the donor had, plus any capital improvements made by the donee, plus any gift taxes paid by the donor.
- Property acquired by inheritance will receive a stepped-up basis valued as of the date of death or a date 6 months afterward, depending on which election is selected. While this may be good for the heir, it might be bad for the estate to value property at a high value and be required to pay estate taxes.
- Property acquired by virtue of a 1031 exchange will have the same basis as the property sold. If this doesn't make sense, refer to definition for 1031 exchange, which is too long to include here.
- The basis must be allocated between land and improvements. Land cannot be depreciated for tax purposes, but improvements can. There is no precise formula, and taxpayers are expected to use good faith in their allocation rather than setting artificially high improvement values in order to maximize depreciation deductions.
- Most consumers do not currently track the basis in their homes, nor the capital improvements such as a new roof, swimming pool, or new garage. This is because current tax code provisions allow individuals up to $250,000 in gain ($500,000 for married persons) on the sale of their personal residence without incurring any tax liability. However, the apparent large size of this number could easily be eroded by inflation, and Congress could easily change the tax laws.

basis point A unit of measure used in finance, it is $^1/_{100}$ of 1 percent. Commercial lenders will typically quote rates as a certain number of basis points above an index, such as LIBOR (London InterBank Overnight Rate) or 10-year Treasury bonds. A fee of 50 basis points for a $3,000,000 loan is a fee of $^{50}/_{100}$ of 1 percent, or $^1/_2$ of 1 percent on $3,000,000, being $15,000.

basket loan Financial institutions are heavily regulated regarding the types of loans they can make and the mixture of the types of allowable loans in the total portfolio. They are allowed to make a very small percentage of loans that would otherwise be prohibited for one reason or another. Such loans are scooped into the miscellaneous basket. The term "basket" is used in a wide variety of circumstances in law, finance, and general business dealings, and always refers to some sort of conceptual container filled with small items.

bay (1) The smallest rentable tenant space in a strip center, usually defined by the front and rear exterior walls and fire walls at either side. (2) An unfinished area between rows of columns or load-bearing walls. (3) Loading areas in warehouse or industrial space. Ascertaining the number of bays necessary and available is usually critically important when working with buyers or potential tenants of such space.

bay depth Represents the distance from the building's corridor wall to the outside window of the building. The bay depth will be a critical limitation when configuring space for the most efficient use. Because of the waste factor when bay depths result in larger than necessary offices, for example, a building with cheap per-square-foot rental rates but inefficient bay depths may be more expensive than one with higher rental rates but a more compatible design. In the diagram, the bay depth is 15 feet.



bay window An arrangement of three or more windows that project outward from the exterior wall.

bearer instrument A security that does not include the name of the owner or payee. Anyone in possession of the instrument may present it and receive payment.

bearing wall A wall that helps support the weight of the upper floors and roof. See *load-bearing wall*.

bedrock The solid rock under soil.

bedroom community An area consisting primarily of commuter residences and small local establishments—grocery, laundry, limited dining, and other similar businesses catering to residents—but no large employers. Also called a dormitory town.

before-and-after rule A rule of damages holding that the measure of damage to a thing is the difference between the value before the injury and the value after the injury. In a real estate context, this often arises in a condemnation case for eminent domain purposes. The government must compensate a property owner for the value of the property taken, but must also pay damages if the remaining property has been injured because of the loss of the other piece.

before-tax cash flow The amount of money generated by an investment after collection of all revenues and payment of all bills, but without any deductions for depreciation or other noncash items, and before calculation of income tax consequences. An important figure in analyzing any investment, because properties with high depreciation expenses may show tax losses but positive cash flows. In the alternative, a property that requires expensive financing for acquisition or operation may show good net income figures for accounting and tax purposes, but have a negative cash flow requiring the owner to supplement the property with money from other sources.

below-market interest rate (BMIR) Government-subsidized interest rate concessions offered to spur development, usually in a particular market segment, such as low-income housing, or in particular market areas, such as parts of the country heavily damaged by natural disasters. In the housing industry, the borrower is generally required to pass along the savings to consumers in the form of lower rents.

benchmark A permanent reference mark, usually set in concrete or iron and used to establish the elevation above sea level or certain corners in a surveying system. All other measurements in the area should be checked for accuracy relative to the nearest benchmark, preferably against several nearby benchmarks to establish redundancy.

beneficiary A person who receives the benefits from something although perhaps not the legal owner of the thing. In real estate, the term is usually encountered in the context of a trust, in which a trustee holds what is called bare legal title to the property, but the property itself and all sums gained from the property are held for the beneficiary. Care should be taken when buying, selling, or leasing property that involves a beneficiary, and, if at all possible, one should gain the beneficiary's signature even though it is not technically required. Otherwise, you could find yourself in the middle of litigation between the trustee and the beneficiary if the beneficiary claims the actions taken were illegal and not authorized.

benefit-of-the-bargain rule A rule of damages that says if a person has been defrauded, that person may recover the difference between the actual value of the property and the value the property would have if it had been as represented.

benefits In eminent domain cases, the concept of "benefit" comes into play because property owners may receive an enhancement in the value of their remaining property after the condemnation. If the enhancement is special to them, or only a very few owners, rather than the general betterment enjoyed by the public at large by the anticipated improvements, then any condemnation award to them may be reduced by the amount of the benefits.

> **Example:** *Ken owns 5 acres of land near an eight-lane city thoroughfare. The only thing preventing him from having valuable road frontage is a 2-foot-deep strip of land still owned by Elsie. This is the only land remaining to Elsie after successive road widenings over the years. The city*

decides to widen the road again and takes all the rest of Elsie's land and a 15-foot-deep strip of Ken's land. The city is liable to Ken for the 15-foot sliver, but Ken suddenly has 5 acres of extremely valuable road frontage property. Ken probably won't receive a check from the city because of the special benefits he received from the condemnation.

bequeath To leave personal property to another in a will. The word devise is used when referring to real property left by will.

bequest A gift of personal property made by will.

berm A small ledge or shoulder of dirt with some type of vegetation, designed to control water runoff, hide something unsightly such as a power substation, or provide a noise-control buffer between busy streets and residential areas.

betterment An improvement to real estate.

BFP See *bona fide purchaser*.

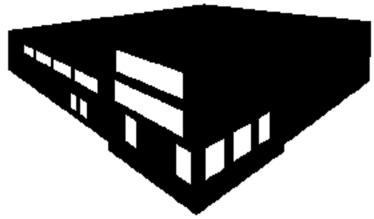
biannual Occurring twice a year. Contrast with biennial, which means occurring every 2 years. If an adjustable-rate mortgage provides for rate changes biannually or biennially, it's important to know the difference.

bid (1) An offer to purchase at a specific price, usually at an auction or foreclosure. (2) An offer to complete specified work for a certain price, usually presented in the context of a request for sealed bids to complete government work.

bid bond A type of bond required in some government construction projects. If required, it must be filed at the same time as the bid. This protects the agency in the event the bidder fails or refuses to enter into a contract after being offered it or withdraws the bid before the award. The bonding company will then pay the agency the difference between the defaulting low bid and the next highest bid, whose bidder will be given the contract.

bid shopping The practice of a general contractor estimating the cost for subcontractors in order to prepare a bid for construction work, and then attempting to induce those same subcontractors to lower their price below the estimate.

biennial Occurring every 2 years. Contrast with biannual, which means occurring twice a year. (It's important to know the difference if an adjustable-rate mortgage provides for rate changes biannually or biennially.)



big box (1) Large square or rectangular building with ample parking, suitable for a wide variety of retail tenants. (2) Regular users of such space, such as Wal-Mart, Target, or Home Depot. An example of usage is, "I'm working with a big box and need to find 12 to 16 acres to buy. Do you have anything?"

bilateral contract A contract in which each party promises to do something in return for the other's promise. If either party breaks its promise, the other may sue. This is the most common type of contract. A real estate purchase contract is a bilateral contract—the seller promises to sell, and the buyer promises to buy. Contrast with a unilateral contract, in which one party has an obligation but the other does not. Option contracts are unilateral contracts—the seller is obligated to sell if the buyer decides to buy, but the buyer is not obligated to buy at all.

bill of assurance A name used in some states to describe the total collection of restrictive covenants that apply to a neighborhood.

bill of sale A written instrument used to transfer ownership of personal property. Many buyers insist on a general bill of sale, in addition to a deed, to ensure that all property intended to pass in the sale actually does so. Some states have held that certain real estate–related interests are actually personal property, and attempted sales via deed were void.

binder (1) Money given as earnest money for an oral contract to purchase real estate, to bind the parties until such time as they can complete the necessary written contract. (2) A written instrument giving immediate casualty coverage for property, even though the insured may not have paid a premium or received a policy. (3) A temporary contract of title insurance in which the insurer agrees to issue a final policy if certain exceptions, such as prior mortgage liens, are removed at or before closing.

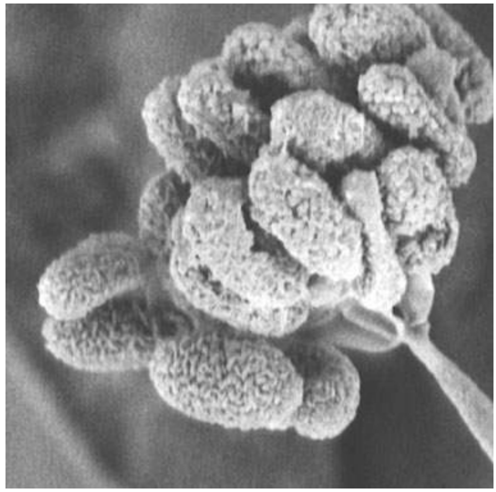
biometrics Increasingly popular building security system technology that relies on automated identification of physical characteristics such as fingerprints or retinal scans in order to determine access rights. The technology and the cost have both reached the point that consumer-level biometric security devices are available, such as for use in self-storage facilities and residences. Access codes, keys, and electronic cards are becoming outdated. Developers should bear this in mind when designing new construction and spend a minor amount of extra money necessary for wiring to accommodate biometric systems.

bird dog Someone who regularly furnishes sales leads to another, but does not actually handle any of the selling. Successful real estate agents usually have many bird dogs.

biweekly loan A loan that calls for payments every 2 weeks, rather than once a month.

Blackacre Mythical property used as an example in nearly all explanations of legal concepts relating to real estate, such as, "If A owns an undivided 1/2 interest in Blackacre… ." If more properties are needed, use Greenacre, and then Whiteacre.

black mold Refers to Stachybotrys chartarum, called stachy for short, a greenish black mold that can grow in parts of a structure exposed to constant moisture. The fungus can produce toxins harmful or even fatal to humans and has been identified in the sick building syndrome. There are some very dark dematiaceous hyphomycetes that look very similar; confirmation of stachy must be made after miscroscope examination. This is an area of widespread litigation and should be a cause of concern to both buyers and sellers of real estate. (For more information, visit the Web site of the Centers for Disease Control and Prevention at www.cdc.gov/mold/stachy.htm.)



Black's Guide A data source for office buildings in certain major markets, providing tenant and other information. Its primary competitor is CoStar. (For more information visit the Black's Guide Web site at www.blacksguide.com.)

blacktop The asphalt paving used on many roads, and also the process of paving the road.

blanket A single mortgage instrument covering two or more properties. It is most often encountered in property intended for development, with partial lien releases given as lots are sold and part of the sale proceeds used to pay down the loan. Contrast with cross-collateralization, in which two or more properties, each with their own mortgages, include the other properties as additional collateral.

bleeding a project (1) In construction, charging excessive development and construction oversight fees, renting one's own equipment to the project at inflated prices, and perhaps putting family members on the payroll in order to bleed off as much money as possible. (2) In rental property management, refusing to make ordinary repairs and replacements in order to take as much cash flow as possible from the project, but with a resulting rapid deterioration of the property. In an area of limited consumer choices, such as communities with high concentrations of low-income housing, the landlord almost never suffers the consequences of this type of decision.

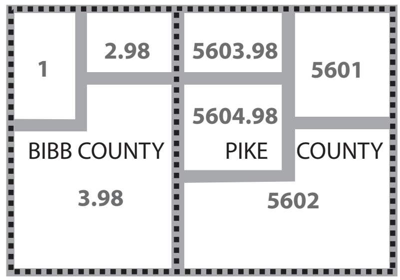
blighted area A declining area suffering from seriously decreasing property values and not likely to recover without some outside intervention. More than simply a market slip, a blighted area can be identified by deteriorating buildings, increased crime rates, and decreased occupancies.

blind ad An advertisement that does not include the identity of the person placing the ad, only a phone number or a post office box number. They are popular with employers placing help wanted ads in order to identify someone to replace a soon-to-be-fired employee. Blind ads are illegal in most states for real estate brokers or agents, who must not only identify themselves in all ads, but include enough information to alert the public of their status as a real estate professional.

block An area bounded by perimeter streets. Many subdivision descriptions employ a subdivision name, and then a block number and a lot number to identify particular properties. The numbers are assigned when the subdivision developer files its plat plan with local authorities.

blockbusting An illegal and discriminatory practice in which someone stampedes another into selling or granting a listing contract by trading on fears the neighborhood is changing with respect to race, sex, religion, color, disability, family status, or ancestry of the inhabitants. (For more detailed information, visit the U.S. Housing and Urban Development Web site at www.hud.gov and search on the term "blockbusting.") See panic peddling.

block numbering area (BNA) A small, relatively permanent statistical subdivision within a county, generally containing 2,500 to 8,000 people and having readily identifiable borders. Similar to census tracts, but differing only in the local versus federal source of the data used to create the maps. Mapped and numbered by the U.S. government, which provides demographic information at www.census.gov. Third-party resellers of demographic information extrapolate from the census tract data into more personalized demographic areas.



Blue book: Any number of pocket-sized reference books on a wide variety of topics. The ones most relevant to real estate are The Blue Book of Building and Construction (www.thebluebook.com), The Apartment Blue Book (www.apartmentbluebook.com), and The Realty Blue Book.

blue laws Laws that prevent the transaction of certain business on Sundays, prohibit the sale of alcoholic beverages any day of the week; and/or place severe limitations on the manner and hours of sale of alcoholic beverages. These laws originated in colonial New England and were printed on blue paper. It is important to know and understand all local blue laws in a market area because, for example, many national restaurant chains will not open locations where Sunday liquor sales are prohibited.

blueprint A detailed set of plans used as a guide for construction. Because of the economies of a very inexpensive method of creating and copying such plans, they were formerly characterized by white lines on blue paper.

blue-sky laws A popular name for state securities laws intended to protect investors and aid them in making informed buying decisions rather than taking the word of a smooth-talking salesperson who "promises the sky."

blue stake When a utility company (telephone, gas, electric, cable TV, sewer, or water, etc.) comes to the job site and locates and spray paints the ground and/or installs little flags or blue stakes to show where their service is located underground. See *utility notification*.

blue top In excavating and in road construction, the practice of marking the desired final grade with a stake topped by blue fibers. The heavy equipment operator continues to move dirt until only the blue tops show above the ground.

B-note investors In commercial real estate financing, purchasers of the subordinate tranches, or second and third mortgages. If a borrower defaults, the B-note investors will suffer losses before the investment-grade tranches. As a result, such investors scrutinize deals more thoroughly, charge higher interest rates commensurate with their increased risk, and typically retain powers to protect themselves somewhat in the event of default. These rights include

- The right to approve modifications to the agreement
- The right to insist on foreclosure in the event of default
- Certain limited cure rights to keep a loan current and avoid foreclosure

board-foot A measure of lumber 1 foot square by 1 inch thick, being 144 cubic inches. In valuing timber land, it is usually important to calculate the number of board-feet that can be harvested from the standing timber. Often, however, timber is now sold by the pound rather than the board-foot.

board of directors The governing body of an organization, charged with establishing policy and with taking steps to see that the policies are implemented. Except in small corporations or associations, the board typically does not involve itself in day-to-day business activities, those being more properly the role of the president. Many corporations have executive boards with true legal responsibilities, and advisory boards of largely ceremonial function designed to reward contributors, create strategic alliances, or gain expert insights into limited areas on an as-needed basis.

- In the real estate context, a director who acts as a broker in real estate transactions involving corporate property cannot accept a commission unless the board specifically authorizes it, even if the president previously granted the approval and would otherwise have had such authority to hire a third party.
- Lenders have legal limitations on the sizes of loans they can extend to their own directors. Large developers should consider this before accepting board positions.
- The board of directors in a cooperative apartment enjoys tremendous power in the approval of new members and in decisions to evict current members.
- The board of directors of a condominium association is charged with making sure the community always has adequate insurance. Because of the shared nature of ownership in the common areas, inadequate insurance could result in the imposition of liability on individual unit owners for an accident in a common area. Failure to maintain the proper level of insurance could subject board members to liability.

board of equalization A local government board charged with the responsibility of ensuring equal property tax assessments. Normally, a property owner appeals to the board of equalization if dissatisfied with the tax assessment notice received for the year.

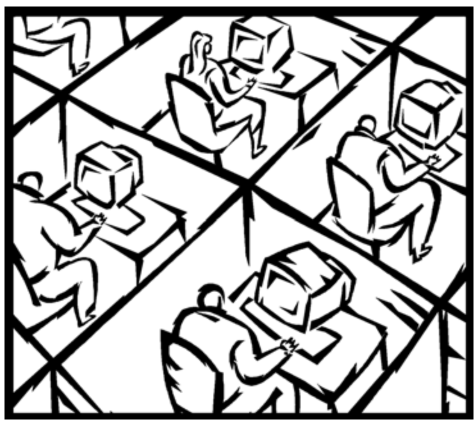
board of REALTORS® A local association comprised of real estate professionals who are members of the National Association of REALTORS® (www.realtor.org and www.realtor.com) and the local or state board of REALTORS®.

board of zoning appeals A local board empowered to overturn decisions of a zoning authority. Before embarking on any possibly contested activity in these areas, such as a zoning change request, it is extremely important to find out the name and requirements of the correct appeals board, should it become necessary to ask for reversal of a decision. Many boards have very limited and technical grounds for appeal that, if known in advance, could have been factored into tactical decisions at the level below. In addition, the time limits for filing appeals are generally short. See *appeals board*.

Boeckh Building Valuation Manual A reference book that provides guidance for the replacement costs (substantially similar utility, but not identical methods of construction) or reproduction costs (identical) for various types of buildings. (For more information go to the Marshall & Swift/Boeckh Web site at www.msbinfo.com.)

boilerplate A term used to refer to standard language appearing in almost all mortgages, leases, sale agreements, and other contracts. Important rights can be signed away by language lurking in the boilerplate; it is important to read all contracts thoroughly and not to skip anything.

boiler room A lead-generating system usually characterized by large groups of people working in cubicles making cold calls to consumers in order to gauge interest in real estate investments, insurance products, refinance offers, or any number of other products. The leads are then sold to professionals for follow-up. Sometimes, the boiler room operation also engages in high-pressure sales techniques, which has lead many states to pass legislation allowing a cooling off period within which to reject and void any contracts entered into as a result of such tactics.



bollard A pillar or post, usually consisting of a metal pipe anchored in concrete and then filled with concrete, placed near building corners, loading docks, entrance doors, and gas pumps in order to protect them from automobiles; may be left natural, painted, or covered with plastic bollard covers.

BOMA See *Building Owners and Managers Association*.

BOMA measurements Standards offered by the Building Owners and Managers Association for determining leaseable square footage and other such measurements. Many have been adopted by the American National Standards Institute, Inc. (ANSI).

bona fide purchaser (BFP) One who purchases property in good faith and for a valuable consideration without knowledge, actual or constructive, of the seller's title defects. Under certain circumstances, BFPs may retain the property free and clear of the claims of others. (As a practical matter, it is difficult to be a BFP of real property because of the constructive notice provided by public filings of almost all real estate–related claims.)

bond A certificate that provides evidence of a debt or obligation.

bond for title A method of selling and financing real estate; also called a land sale contract or a contract for sale. The owner signs a contract agreeing to transfer the property to the buyer after the buyer makes all required regular payments over a certain period of time. Unlike a mortgage, the seller avoids many problems associated with foreclosure and possibly bankruptcy if there is a default. The practice is looked upon with disfavor by courts, which typically try to find ways to convert the relationship in some sort of equitable mortgage, and thus grant the consumer protections afforded by the law.

bonus depreciation Additional depreciation deductions allowed by the IRS under certain circumstances and possibly in certain areas. After the devastating effect of the 9/11 attacks, business owners were allowed to take a first-year depreciation deduction of up to 50 percent of the basis of property placed in service between specified dates. This was in contrast to the normal deduction of 3.63 or 2.56 percent for real property, depending on whether it was commercial or residential rental. Again, after the 2005 hurricane season, the IRS allowed the same bonus depreciation for property placed in service in specifically named Gulf Opportunity Zone counties in the affected states.

book cost The acquisition cost of a property as reflected on the books and records of a company.

book depreciation The amount of depreciation expenses deducted for a property on the books and records of a company. Book depreciation may be charged at a faster or slower rate than allowed by the IRS, in order to provide management with a realistic view of the gradually diminishing value of the company's assets.

book value The value of an asset as reflected on the books and records of a company, taking into account the original book cost of acquisition and then deducting depreciation expenses charged over the years and adding capital expenditures. Book value rarely bears any relationship to the true value of assets.

boomerangers Generation-X aged persons who return home to live with their parents after being unable to find jobs that will provide adequate compensation to support them as well as their parents did.

boot (1) Money or other property that is not like-kind and is given to make up the difference in value between two properties exchanged in a like-kind exchange under Section 1031 of the Internal Revenue Code. If a gain would otherwise be recognized on the transaction, except for the intervention of the 1031 vehicle, then gain must be recognized and taxes paid to the extent of the value of the boot. (2) Especially in Texas, it is common among property developers to require some type of boot to show that more than money is involved in their business transactions.

> **Example:** *A seller might agree to sell prime property for $12,000,000, but only if the buyer throws in a particularly handsome bronze statue sitting on his desk.*

bootstrap financing A funding expansion from internal sources, such as reducing expenses in the budget, collecting rents or other receivables more aggressively, delaying payments to vendors, or preselling units.

boring tests Tests conducted to determine the soil's load-bearing ability to support a building or other improvement, and the size of the footings necessary. Also called compaction tests.

bottom feeder A derogatory term for someone who buys distressed properties; one who profits from the misfortunes or poor management of others.

bottom-fishing The strategy of offering ridiculously low prices for large numbers of properties because of the expectation that, statistically, someone is bound to "bite" and accept an offer.

bottomland Lowlands located in a valley or other low area near rivers, streams, or bodies of water prone to flooding. Bottomland was especially prized by farmers at one time because of the constant deposit of nutrient-rich soils.

boundary The perimeter of a property as fixed in the legal property description. Boundary line disputes are common, emotional, and often end up in years of litigation and sometimes mayhem. If one is buying property in a subdivision, it is advisable to have the seller locate and point out the markers at the corners of the property. These may or may not be consistent with fence lines, shrubberies, driveways, or even structures built on the wrong side of the boundary. If buying nonsubdivision property, employ the services of a licensed professional surveyor to determine the proper boundary.

boundary line disputes Probably the most common type of lawsuit involving real estate, because it is the type least likely to result in settlement before trial. Problems generally arise as a result of some or all of the following four factors:

1. Formerly unsurveyed property owned by amicable neighbors passes into the hands of an outsider who orders a survey and discovers the boundary lines are in different places than previously thought.
2. Formerly amicable neighbors who did not care about a 10- or 20-foot discrepancy in boundary lines suddenly care when oil or gas is discovered under the land, or the property becomes so valuable that it is being sold by the square foot rather than by the acre.
3. Advances in surveying technology would have placed a property corner in a different location than the original surveyor placed it, and when this is discovered, the neighbors go to court.
4. Someone mistakenly builds a house or other improvement with a portion located on a neighbor's land. Words are exchanged regarding tearing down the trespassing improvement, and the parties resort to the court system to solve their differences.

There are very specific rules for resolving boundary line disputes:

1. Advances in technology make no difference because the property corners are where the original surveyor placed them according to his or her own state-of-the-art technology for the time, not at the absolutely accurate location according to today's technology.

2. If there are mistakes in the description, courts follow a hierarchy of things to consider and things to ignore if there is a conflict among descriptions within a deed.
3. If someone innocently builds an improvement that encroaches on another's land, most courts will figure out a way to either give the property to the encroacher or will order the other person to sell a minimal amount of land to the encroacher.

B-paper Home mortgages for consumers with poor credit or other disabilities that prevent them from obtaining the best possible interest rates, percentage of financing, or other terms. The promissory notes are generally at high rates of interest commensurate with the higher risk of default assumed by the lender. The B-paper industry was largely unregulated for many years, but has now come under increasing scrutiny and even class action litigation because of widespread predatory abuses. On the other hand, the industry is predominantly honest and does fill a void in the home mortgage market, enabling millions of responsible persons to enjoy the benefits of homeownership.

branch office Any secondary or ancillary place of business. Most states require branch offices of real estate companies to have their own broker-in-charge or qualifying broker, legally responsible for activities at that branch.

breach of contract A violation of some or all of the terms of a contract. Most contracts spell out specific remedies in the event of breach, but include a basket granting any and all other remedies allowed at law or equity. Some states have statutes making defaulting parties liable for the attorneys' fees of the other side; other states do not have such laws and attorneys' fees are recoverable only if that right is granted in the contract.

- In a real estate context, some purchase contracts provide that a breaching buyer will lose his or her earnest money but not be responsible for any other damages. If not so specified as a limitation on damages, then a breaching buyer is fully responsible for all the seller's damages, which could include losses when the property is sold for a lesser amount, costs of remarketing the property, attorneys' fees, and possibly even consequential damages such as the seller's loss of opportunity to purchase something else. In extremely rare circumstances, the seller can obtain an injunction forcing the defaulting buyer to proceed with the purchase.
- If the seller defaults, the buyer may apply for an injunction to order the seller to proceed with the sale. This unusual remedy is because the law says that real property is so unique that money damages can never compensate one for its loss—only the property itself will suffice. Despite that, buyers may waive this remedy of specific performance and seek damages instead. Under some circumstances they may receive both.

breakdown method In appraisal, the process of dividing depreciation into separate components, assigning a weight to each one, and then arriving at a depreciated value of the property. This has nothing to do with book depreciation or tax depreciation, but is instead intended to calculate the true current value of the improvements. The three types of property depreciation are:

1. Physical depreciation. What is the condition of the improvement?

2. Functional obsolescence. Loss of value because of physical factors other than deterioration, such as a poor floor plan, a one-car garage instead of a two-car garage, or high ceilings and multiple windows creating heating and cooling problems.
3. Economic obsolescence. Loss of value because of factors outside the property, such as noise pollution from nearby highways or an airport.

break-even point In any project, the point at which revenue will be sufficient to pay all required expenses and debt service. Most industries have generally recognized rules of thumb for the appropriate break-even point. For apartments, it might be 80 percent occupancy, for self-storage it might be 55 percent occupancy, and for business center space it might be 75 percent occupancy. Most construction lenders require that a project at least reach the break-even point before construction lending can be converted to fixed-rate and lower-rate permanent financing. If preparing a pro forma for a project and your break-even point is dramatically different from the rule of thumb for your industry, it may be time to check your assumptions or your math.

bricks and mortar A popular expression for a physical location, as opposed to intangible assets or even cyberspace.

bricks, clicks, and flips Retail stores that have physical locations, Internet sale sites, and strong catalog sales. (A variant of "bricks and clicks" and "clicks and mortar.")

bridge loan A short-term loan intended to bridge the gap between other transactions. (1) Temporary financing obtained at the end of a construction loan period but before permanent financing can be arranged. (2) A loan obtained by a home buyer when the equity from an existing home is necessary to provide the down payment for a new home, but the buyer has been unable to sell his or her old home as of that time (frequently offered by employers who transfer employees to new cities).

bring-down search An additional title search to make sure nothing adverse has been recorded in the real estate records since the time of the original search and the recording of the deed or mortgage. This time period is known as the gap.

British thermal unit (BTU) A unit of measure of heat, used in rating the capacity of air conditioning and heating equipment. One BTU is the amount of energy necessary to raise the temperature of 1 pound of water by 1 degree Fahrenheit.

broker An agent employed to make bargains and contracts for compensation. In the real estate industry, a broker does not make contracts and bind his or her principal but, instead, acts as an intermediary between buyers and sellers.

- The broker-in-charge or qualifying broker in an office is responsible for setting office policies, supervising agents in the execution of their legal responsibilities, and complying with all regulatory requirements. All contracts with consumers are with the broker, who is the only one legally permitted to enter into such relationships. The broker may then delegate some responsibilities to agents or other licensed salespersons, but does not thereby relieve himself or herself of liability.

- Brokers have fiduciary responsibilities to their principals, called clients. They must exercise honesty, integrity, care, and skill in carrying out their duties. All other persons, called customers, are owed the duty of honesty.
- The broker must submit all written offers to the principal as soon as received and may not hold any offer while waiting for a more attractive one.
- All earnest monies coming into the possession of the broker must be deposited into an escrow account as soon as possible according to the instructions of the offer, but it may hold a check, undeposited, in a file if the offer states the check may not be deposited until the offer is accepted.
- All client monies, such as from property management activities, must be maintained in an escrow account and cannot be comingled with the broker's other funds.

brokerage A real estate activity devoted to assisting buyers and/or sellers in the purchase of real property. In smaller communities, brokerage activities are conducted on a type of general practitioner basis. In larger communities, brokers generally specialize in certain price ranges or types of residential properties; or some combination of office buildings, retail space, food service, industrial, warehouse, farms and lands, or development land.

broker-in-charge See *broker*.

broker price opinion (BPO) In most states, only a licensed appraiser is authorized to offer a professional opinion as to the value of a property. Often, though, a real estate broker will be asked to offer an opinion regarding the price to ask when marketing a property. This is a fine distinction, but perfectly legal, as long as labeled as such. BPOs are frequently obtained by out-of-state lenders seeking to work out a sale of a distressed property.

broom clean Containing no debris. Most apartment leases require that the premises be left broom clean.

brownfields According to the Environmental Protection Agency, "a brownfield is a property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant." The EPA's Brownfields program (initiated in 1995) supplies local grants to support revitalization efforts by funding environmental assessment, cleanup, and job-training activities.

brownstone A row house built of reddish-brown sandstone; usually refers to one built in the nineteenth century, in a large city, with a narrow profile facing the street.

BTU See *British thermal unit*.

BTXE Toxic chemicals typically found as soil contaminants at former gas station or other petroleum-handling sites. Short for benzene, toluene, xylene, and ethylbenzene.

bubble A period of rapid expansion and price increases, followed by a market slowdown and contraction. Many analysts claim a real estate bubble exists in some cities characterized by a price growth of more than 30 percent per year. Other analysts disagree. (For housing cost information in various states and cities, see the Office of Federal Housing Oversight Web site at www.ofheo.gov, and click on House Price Index.)

budget (1) An itemized list of expected income and expenses over a period of time. (2) An estimate of particular monetary needs, such as a capital budget for construction or a development budget for construction and business ramp up to break even.

budget mortgage Typically a residential mortgage, one that requires monthly payments for real estate taxes and insurance in addition to principal and interest payments.

buffer zone (1) A transitional area between two areas of different zoning or characteristic land use. (2) Green space or other open or natural areas providing privacy and noise pollution control for a subdivision.

builders and sponsors profit and risk allowance (BSPRA) An amount above the cost of constructing apartments that is allowed to be included in the project costs for purposes of determining the maximum loan amount in certain government-sponsored programs; generally calculated as 10 percent of the project development cost, less the cost of the land.

builders risk insurance Fire, liability, and extended coverage protection to cover the risks encountered when a building is under construction.

builder warranty A guarantee offered by the builder on the quality of construction.

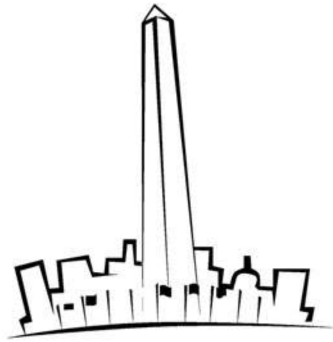
building codes Regulations established by local governments to specify minimum building standards for foundations, structural support, electrical and plumbing systems, fire retardation, accessibility, safety for small children and others, fire escapes, numbers of exits, numbers of parking places, and many other areas concerned with the health and safety of the population. The most widely employed building code is the standard known as the International Building Code. Some local governments still employ the Southern Building Code. (For more information go to the International Code Council Web site at www.iccsafe.org.)

building efficiency ratio The proportion of leasable space in a building to the total space.

Building Energy Conservation Code As a part of the National Energy Policy Act of 1992, Congress required that states incorporate energy-efficient requirements into their building codes for commercial buildings. Details regarding model codes may be obtained from United States Department of Energy Web site at www.energycodes.gov or a local building inspection office.

building height The total height from the bottom of the ground floor to the highest structure or decoration on the roof. Local building codes or airport avigation easements may place restrictions on building height.

Example: *The Washington, D.C., building height restriction states that no building may be more than 20 feet taller than the width of the street in front of it, but exceptions may be granted for spires, towers, domes, minarets, pinnacles, and engineering structures such as ventilation shafts.*



building inspection A physical review of a property in the various stages of construction, to ensure the builder has complied with all requirements of the local building codes. Failure to pass a particular inspection may halt progress until the condition has been corrected. For example, no construction may proceed on a building until it has passed its foundation inspection. The local inspections department will not issue a certificate of occupancy (C/O) until the property has passed fire marshall review and any other inspections that may be required in the locale. In order to provide de facto enforcement of the rule prohibiting occupancy without a C/O, many utility companies will not provide permanent service without proof that one has been issued and will disconnect temporary service at the end of the originally anticipated completion date.

building line A setback line; the closest a building may be allowed to come to the property boundary line. Building lines may be set by local government or by subdivision building restrictions.

building loan agreement A loan to finance construction. Funding is made either at preestablished stages or at completion, or upon submission and approval of invoices evidencing construction bills.

Building Owners and Managers Association (BOMA) This professional organization (www.boma.org) is made up of persons who own or manage buildings, primarily office buildings.

building permit Written permission from local government to proceed with construction, substantial repair, demolition, or sign erection on real property. The permit process serves several purposes:

- Revenue generation through permitting fees
- Early identification of potential problems, such as the need for historical district approvals
- Entry of the project into a tracking system to ensure code compliance through periodic inspections
- Estimation of the anticipated cost of the project, in order to assist local government with analysis of building and development trends
- Initiation of steps that will ultimately ensure all subcontractors have business licenses and correctly report their income for the year

(Developers typically include contingencies in their purchase contracts to allow for difficulties in obtaining building permits. Especially with large projects, which require extensive plan review before issuance of a permit, the permitting process can take many months.)

building restrictions Zoning or subdivision restrictions on the size or type of building that can be erected.

building standard A particular style and quality of building materials, finishes, and accessories used in a specific commercial building. Office leases will generally include a construction allowance or build-out allowance to complete space according to a tenant's space design and using building standard materials. If the tenant desires a better quality, the tenant may usually pay for the difference in cost and obtain it. The phrase also comes into play in circumstances when the landlord has agreed to be responsible for replacing all building standard lightbulbs in the leased space. If building standard is fluorescent, and the tenant has incandescent bulbs in spaces such as conference rooms, then the tenant will have to pay for replacement of those bulbs. This can be a significant expense.

build-out Improvements to leased space to make it usable for a particular tenant's needs.

built-ins Appliances, machinery, and other equipment installed as part of a building rather than left freestanding. Built-ins are considered fixtures, and fixtures are considered real estate. A contract to sell real estate automatically carries with it an obligation to leave all fixtures in place and included in the sale. There is usually a great deal of controversy over the exact nature of something as a built-in or not, such as a high-end refrigerator surrounded by custom cabinetry and with matching door insert panels. If in doubt, specifically list all appliances, machinery, and other such questionable items in the purchase contract.

built to suit An arrangement in which a property owner agrees to construct a building according to a tenant's exact specifications, and then to lease the property to the tenant, preferably on a long-term basis.

bulk sale Transfer of all or substantially all the assets of a business. Some states have bulk sales laws requiring notice to creditors before any such sales, so that a debtor may not liquidate all assets, pocket the money, and leave creditors holding the bag.

bulk zoning Zoning designed to control density and overcrowding.

bullet loan A loan with a 5- to 10-year term, no amortization, and the entire principal balance due at the end.

bundle A package of shingles. Normally, there are three bundles per square and 27 shingles per bundle. Most roofing contractors charge by the square or by the bundle.

bundle of rights theory A concept describing all the rights capable of ownership in real property. The bundle may be broken, and only some of the rights transferred and others retained, or they may be transferred to different people.

burden of proof In court, the responsibility to come forward with credible evidence that a thing happened or did not happen. Normally, the party who complains about a wrongdoing has the burden of proof. In some circumstances, primarily under federal laws related to discrimination, the aggrieved party need only make an allegation of wrongful behavior and the defendant has the burden of proof that his or her behavior was reasonable under the circumstances. The burden of proof may be set at different levels for various types of litigation. For example:

- When contesting a property tax valuation, the owner must generally prove that the assessment was manifestly excessive, clearly erroneous, or confiscatory. This burden of proof is very high, much more than required to show the assessment was simply inaccurate.
- Housing discrimination cases involve a three-step process that moves the burden of proof back and forth. Under what is called the McDonnell Douglas test, plaintiffs have the burden of showing they are a member of a protected minority; they applied for and were qualified to rent or purchase property; and they were rejected and the housing or rental opportunity remained available afterward. That creates a presumption of discrimination, which shifts the burden to the defendants to prove they had legitimate, nondiscriminatory reasons for their actions. If successful, the burden shifts back to the plaintiffs to prove by a preponderance of the evidence (meaning, "more likely than not") that the offered reason was a pretext and there really was a discriminatory purpose.

Bureau of Land Management An agency of the U.S. Department of the Interior, charged with the care, custody, and management of all land owned by the U.S. government, comprising approximately 261 million acres. It also maintains current and historical information regarding land ownership and use, maintains a geospatial (GIS) data clearinghouse, and manages and provides access to the public land survey system, also called the rectangular survey system employed in surveying real property. (The Bureau of Land Management Web site is at www.blm.gov.)

burned-out tax shelter An investment that has exhausted most of its tax-sheltering benefits. For properties taking advantage of bonus depreciation of up to 50 percent for the first year placed in use, the shelter can be burned out by year 2.

business center An office arrangement providing individual offices for local representatives of large companies, professionals, and small-business persons, with sharing of lobby space, conference rooms, support staff, telecommunications services, office equipment, and other amenities. Formerly called executive suites and shared offices. The industry trade organization is the Office Business Center Association International (www.obcai.org).

business day A standard day for conducting business, excluding government holidays and weekends. Various notices required in real estate contracts, leases, or other agreements may have deadlines based on the passage of a certain number of days, or of business days. To count days, you start with the day after the triggering event, and count that as day 1.

business interruption insurance Insurance that provides benefits if business is interrupted while repairs are conducted after an insurable loss.

business park A development designed for warehouse, office or light-industrial use, with generous landscaping and open spaces.

business value The intangible value of a business, over and above the value of the land, improvements, fixtures, receivables, and cash. Intangibles may consist of goodwill, franchise value, and proprietary systems and procedures.

buyback agreement A provision in a contract requiring the seller to buy the property back for a stated price if certain conditions are met within a specified period of time. One wishing to purchase an existing automobile dealership may purchase the land first, with a buyback agreement requiring seller repurchase if the purchaser is unable to obtain manufacturer approval for transfer of the dealership itself.

buy down To reduce the interest on a mortgage loan by paying discount points in order to buy down the rate. For residential loans, it rarely makes sense for borrowers to buy down their rate. In order to evaluate, ask for the amount of the monthly principal and interest payments with and without the reduced rate. Subtract the lower number from the larger number. This is the amount of your monthly savings. Divide your monthly savings into the price for the buy down. This provides the number of months you must pay on the mortgage before you will have saved enough money to pay for the discount points. Finally, ask yourself, "Do I realistically think I will own this property for that length of time?" If not, then do not pay the points.

buyer's broker An agency relationship in which the broker represents the buyer rather than the seller. This is typical in commercial real estate transactions, but relatively rare in residential real estate brokerage. For residential brokerage, most agents "working with" buyers are actually subagents of the seller.

buyer's market A market with more properties for sale than can reasonably be expected to be purchased by the available demand. As a result, sellers will have to compete against each other to attract buyers and will usually do so by lowering prices.

buyout (1) Securing the removal of tenants from a building by paying cash incentives for the early termination of their leases. Owners may desire to buy out tenants in order to rehab the property to attract a better quality of tenant at higher rates; in order to sell the property to an owner-occupier; or to remove an objectionable tenant causing problems but not technically in default. (2) Securing the release of a tenant from lease obligations in another building so the tenant can rent in the owner's building. The other building's owner may permit the buyout if he or she believes the departing tenant can be replaced fairly quickly, thereby gaining a large windfall profit from the buyout payment.

buy-sell agreement An agreement among partners or shareholders describing the circumstances and terms of sale if one or more wish to exit the arrangement or wish to sell their shares to an outsider.

bylaws Regulations by which an organization conducts its governance activities. They typically provide for the timing and method of elections and regular meetings, number of directors and other officers, methods and notice necessary for special elections or meetings, number of votes required for different types of actions, establishment of standing committees, and a grant of authority to organize other committees, powers of the board, officers, and various committees. The developer of a subdivision or condominium project typically creates the first set of bylaws and appoints the initial board of directors.

by operation of law A method of acquiring rights in real estate without any specific intention or even knowledge on the part of the owner. Spouses may gain rights through homestead, dower (widow's rights), curtesy (widower's rights), or community property statutes.

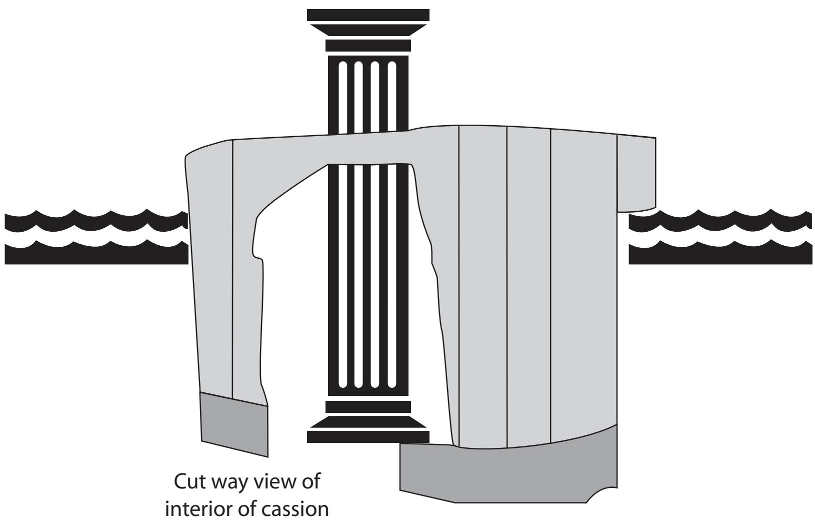
C

CAD (1) See *cash available for distribution*. (2) See *central appraisal district*. (3) See *computer-aided design*.

cadastral (1) A legal map for recording ownership of the various parcels of land within a jurisdiction. (2) The United States Cadastral System program within the U.S. Department of the Interior Bureau of Land Management, responsible for surveying and related activities. (For more information go to the Bureau's Web site at www.blm.gov.)

CAI See *Community Association Institute.*

caisson A casing or cylinder used to sink shafts into wet or unstable ground, or a watertight structure within which construction is conducted under water. Often used in bridge building; sometimes used in commercial construction.



Cut way view of
interior of cassion

call option See *call provision*.

call provision A clause in a loan instrument that gives the lender the right to accelerate the debt upon the occurrence of certain conditions. These might include filing for bankruptcy (illegal, but it's in all the promissory notes anyway), reduction in value of the collateral, occupancy levels dropping below certain minimum levels in income-producing properties, or the catchall clause "whenever the lender deems itself insecure." As a practical matter, it would be an unwise lender who relies solely on the "deeming itself insecure" clause, because such action almost always results in litigation in which a jury, usually of the borrower's peers, gets to decide if it was reasonable under the circumstances for the lender to panic.

CAM See *common area maintenance*.

cancellation clause A clause in a contract or lease that allows one or either party to cancel it upon the happening of certain named events other than a default. It is most often encountered: (1) in the lease for a single-tenant commercial building or house, allowing the landlord to cancel the lease upon sale to another owner who wishes to occupy the property rather than use it as an investment, and (2) in a commercial lease for a small-space user who might stand in the way of expansion by a larger tenant. Well-negotiated leases include a provision for some sort of compensation to the tenant if this happens.

cantilever A beam or overhanging architectural element that is supported at only one end. The most common examples are bay windows and swimming pool diving boards. The most famous example is a balcony that seems to be suspended in the air above a waterfall at Frank Lloyd Wright's architectural masterpiece, Fallingwater, in Pennsylvania (www.paconserve.org/fallingwaterhome.htm).

cap A ceiling on the adjustments that can be made in the payments or interest rate of an adjustable-rate loan.

capacity The legal ability of parties to enter into contracts.

- Full capacity. Having unlimited ability to enter into binding contracts of all types.
- Limited capacity. Having the ability to enter into binding contracts for certain things, such as a minor's contracts for necessities, but also having the ability to disaffirm other contracts upon reaching legal age, for example.
- No capacity. Having no ability to enter into contracts, such as one who has been adjudicated as mentally incompetent.

capital (1) In architecture, the top part of a column. (2) In finance: (a) All the accumulated goods, possessions, and assets used for the production of income and wealth. (b) The amount invested in business.

Corinthian capital.

capital asset (1) All property held by a taxpayer except inventory or goods in process. (2) All property except that held for resale to others in the ordinary course of business.

capital calls A call for additional equity investment by shareholders or partners in order to fund cash shortfalls in development or operations, or to compensate for the falling value of noncash assets and the need to increase cash so that liabilities do not exceed assets.

capital expenditure Money spent on capital improvements, being those that change the nature of property, extend its useful life, or otherwise improve it beyond the natural improvement to be expected with routine repairs and maintenance. This is an important concept because capital expenditures must be added to the basis and depreciated slowly over time, while noncapital expenditures for repairs may be deducted entirely in the current year on one's taxes.

capital gain The taxable gain recognized from the sale of a capital asset. It is the difference between the sale price of the property and the adjusted basis. Tax laws routinely offer preferential treatment for long-term capital gains on property held for a certain period of time before sale. Capital gains may be offset by capital losses.

capital improvement See *capital expenditure*.

capitalization rate Usually called a cap rate, it is a number used in order to estimate the value of an income-producing property. There are no cap rate tables, no firm standards, and no universal formulas for arriving at one. Cap rates change frequently, depending on market demand for particular types of properties, lender appetite for particular types of loans, and prevailing interest rates. Most commercial real estate brokers, appraisers, and lenders know a range of cap rates for different types of properties. One divides the annual net operating income by the cap rate to arrive at a value. High-quality multi-tenant medical offices might sell for cap rates of 7 percent, and rundown apartment buildings with high turnover might sell for a cap rate of 13 percent. If both of them had gross rents of $300,000 per year with operating expenses of $60,000, then each would have a net operating income (NOI) of $240,000. By dividing the cap rate into the NOI, the medical offices would have a value of $240,000 ÷ 0.07, or $3,428,571. Using the same formula for the apartments, but the higher cap rate, $240,000 ÷ 0.13 gives a value of $1,846,153. It seems counterintuitive at first, but the higher the cap rate, the lower the value.

capitalize (1) In finance: (a) To add an expenditure to the basis of property. (b) To provide funding to an enterprise. (c) To book something as an asset and depreciate it rather than writing off the money spent as an expense. (When one "cooks the books" for a business, extensive repairs might be capitalized as improvements in order to make the enterprise appear more valuable than it is in reality. This approach runs counter to the normal taxpayer desire to treat all repairs as expenses in order to gain maximum tax deductions in the current year.) (2) In appraisal, to estimate the present value of an income stream from a business or property.

capitalized closing costs A taxpayer may write off as deductible expenses some of the closing costs associated with the purchase of property or the acquisition of a loan. Others must be deducted proportionately over the term of the loan, so that if the loan is for 30 years, $1/30$ may be deducted each year. Still others must be capitalized, meaning treated as additional money spent on the purchase price when it comes time to calculate the gain on a later sale of the same property.

Tax Deductions for Home Purchase Expenses

	Deduct in Current Year	Amortize over Loan Term	Capitalize
Loan origination fee for primary home purchase	✓		
Buyer-paid loan discount points for primary home purchase	✓		
Seller-paid loan discount points for primary home (but only if the seller doesn't deduct them also)	✓		
Any of the above three, but for secondary home		✓	
Prepaid interest	✓		
Property tax prorates	✓		
Title insurance for owner			✓
Survey			✓
Legal fees for closing			✓
Recordation fees and transfer taxes			✓
Normal seller expenses you agree to pay, like real estate commission, back taxes, and unpaid assessments or dues			✓

For more information, consult IRS Publications 530 (Tax Information for First Time Homeowners), 523 (Selling Your Home), 587 (Business Use of Your Home), and 936 (Home Mortgage Interest Deduction) available at www.irs.gov or by calling 800-829-3676.

capitalized value of future income The value today of the right to receive income in the future. The concept rests on the principle that no one would pay $120 today for the right to receive $120 one year from today. Neither would anyone pay $120 today for the right to receive $10 per month over the next 12 months. Add to that the idea that relative risk affects a person's decision making. You might place $120 in an FDIC-insured savings account today, in order to receive $140 in one year. But, would you pay $120 to an out-of-work student, in exchange for her promise to pay you $140 in one year? Probably not. These two concepts—the time value of money and the evaluation of risk—are at the heart of discounting. Discounting is the basic tool for reaching a capitalized value of future income. See *present value* or *discounted cash value*.

capitalized value of property The acquisition cost of the property, plus expenses of acquisition and improvement. The choice between adding an item to the capitalized value or writing it off as an expense in the current year is one of the critically important decisions of any business or investment property. It is important to have a grasp of the hard-and-fast rules and an understanding of the gray areas.

capital loss A loss recognized upon the sale of a capital asset. It is the difference between the sale price of the property and the adjusted basis. Just like capital gains, capital losses can be either short term or long term. Long-term capital losses may be set off against long-term capital gains. Short-term capital losses may be set off against short-term capital gains; one may not recognize a capital loss on the sale of a personal residence.

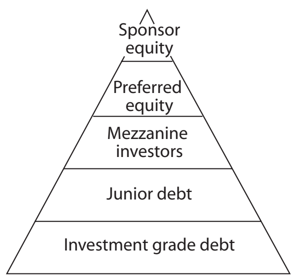
capital markets The markets in which equity is raised and long-term loans (over one year) are originated and traded. These include the stock market, the bond market, and the primary market. The primary market is any market in which the original issuer receives money, such as an investment house that purchases all securities for an original issue and then resells them on the stock market. Short-term debt instruments, for one year or less, are sold in the money markets, not the capital markets.

capital recapture Return of the principal invested in a property, normally expressed as a dollar amount over a period of time.

capital recovery See *recapture rate*.

capital stack A description of the totality of capital invested in a project, including pure debt, hybrid debt, and equity. The stack is described as containing the most risk at the top, traveling down the stack to the position with the least risk. Higher positions in the stack expect higher returns for their capital because of the higher risk. Lenders and equity stakeholders are highly sensitive to their position in the stack. Typically, the stack is arranged as follows.

1. Sponsor equity
2. Preferred equity
3. Mezzanine investors (hybrid debt and equity)
4. Second and other junior mortgages
5. Investment-grade first mortgages



Capital stack.

capital structure See *capital stack*.

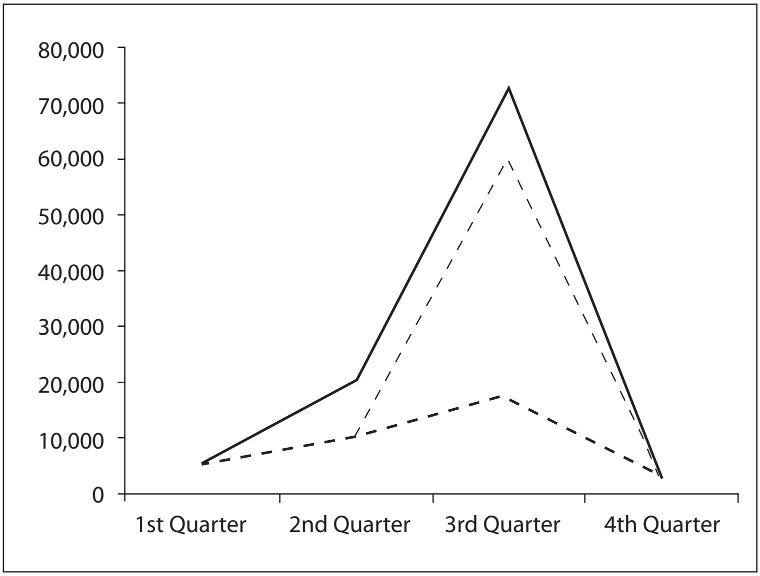
cap rate See *capitalization rate*.

capture rate The sales or leasing rate of a project, which is usually compared to similar projects in the marketplace. There are various measurements, depending on the size of the units being sold or leased. When referring to commercial real estate space for lease, the capture rate might be expressed as an average number of square feet leased per month, quarter, or year. When referring to small space with short rental terms, such as self-storage or business center space, the expression is also used to communicate the number of units rented versus the number of inquiries per month, or sometimes the number of units rented versus the number of physical visits to the property per month. All these measurements allow management to compare its success to others in the marketplace and to make adjustments in pricing, advertising, or possibly even sales personnel as a result. They also allow management to make decisions about future development, in order to accurately anticipate the length of time it will take a project to reach stabilized occupancy or, the alternative, to break even.

Example: *The following table shows capture rates of square feet of space rented in each of the quarters of the past year, for three different buildings.*

Square Feet of Space Leased, per Quarter, in Three Different Buildings

Quarter	Building A	Building B	Building C
1st	5,000	0	500
2nd	10,000	0	10,000
3rd	18,000	42,000	12,500
4th	2,000	0	500



A quick glance at the chart shows that tenants seem to sign the most leases in the third quarter, although the negotiating process probably starts much earlier.

caravan A group inspection tour of newly listed properties by local real estate agents; a field trip to view the competition's listings.

carport/car porch An open-air roofed structure used to house vehicles at a residence. Contrast with a garage, which must be completely enclosed.

carry-back financing Seller financing through the vehicles of a second mortgage, a wraparound mortgage, or a bond for title.

carrying charges Costs incurred in owning property up until completion of a development, as opposed to the actual development expenses themselves. Carrying charges must be capitalized and then amortized, or expensed, over the next 10 years as tax deductions. Examples include interest accrued on development loans, and property taxes.

carryover basis In tax accounting, the retention of an earlier basis (adjusted acquisition cost) in property even though the property has changed hands. This happens most often in two instances: (1) Someone acquires property by gift. The basis is the same as it was in the hands of the donor, adjusted upward for any gift taxes paid by the donor. (2) In a 1031 exchange, in which like-kind property is exchanged for other like-kind property in a sort of perfectly legal accounting sleight of hand, the basis in property acquired is the same as the basis in the property given up, even though both might currently have substantially different fair market values.

carve-out An area of personal liability in an otherwise nonrecourse loan. A lender may be willing to accept property as sufficient collateral for a loan, without requiring personal liability on the part of the corporate or individual borrower in case there is a default and the collateral is insufficient to pay the debt. The exceptions, or carve-outs, are for things outside the ability of the lender to analyze during underwriting, such as borrower fraud or environmental claims.

cash available for distribution (CAD) Encountered in REIT (real estate investment trust) and large corporation accounting, it is cash from operations after payment of all expenses and a reserve for taxes, repairs, and reasonably anticipated capital expenditures.

cash equivalent (1) In finance, assets easily converted to cash. Lenders like to see large percentages of assets held in cash and cash equivalents rather than tied up in real estate or stock in small corporations. (2) In appraisal, the conversion of a sales price with favorable or unfavorable financing terms into the equivalent price if the consideration had been all cash. A seller might demand an above-market price for a property but be willing to hold the financing at below-market rates, for example. Such a transaction would require analysis for the cash equivalent sales price.

cash flow (1) Noun: The cash available from an investment after receipt of all revenues and after payment of all bills. (2) Verb: The process of creating cash flow, as in "I think that property will start to cash flow in about a year." A property can have positive cash flow (good) or negative cash flow (usually bad). Cash flow is not the same thing as profitability. A property can be profitable, meaning gross income less expenses, depreciation, and interest on debts results in a positive number. That same property can have a negative cash flow because of the need to pay principal payments on loans or expend money for something that represents a capital expenditure, like a new roof.

cash flow mortgage A loan workout tool in which all, or nearly all, of the cash flow from a property is used to service the debt for some period of time, even though this amount may be less than the amount originally expected by the lender.

cashier's check An official check issued by a bank with itself as the drawer. Contrast with a certified check, which is one drawn on the bank customer's account, with the customer as drawer, but certified as good by the bank. Closing companies usually require a cashier's check for the purchaser's portion of all closing costs and purchase money. A cashier's check can be the subject of a stop-payment order. Because of widespread forgery of cashier's checks, many closing companies will not complete closing until funds are actually collected and in the closing company's escrow account.

cash method An accounting method employed by individuals for preparation of their taxes, and often used by small businesses. Income is counted when the money is actually received by the taxpayer, and expenses are counted during the period in which they are actually paid. Contrast with the accrual method, in which income is counted when it is earned, whether or not it results in money during that period, and expenses are counted when they are incurred, regardless of when they are actually paid. Cash method accounting can dramatically skew financial statements, making properties appear profitable solely as a result of holding bills and not paying them until another period.

cash-on-cash A tool for investment analysis, being a comparison of the cash flows taken from a property over some period, usually a year, as compared to the original cash investment.

cash-on-cash return See *cash-on-cash*.

cash out To liquidate an asset.

cash-out refinance To refinance a property in an amount sufficient to pay off existing debt and provide cash to the owner. Because this is not a taxable event, it is a widespread way for investors to realize benefits from the growth in their assets without having to sell them.

cash purchase A property acquisition with no financing. Even without a financing contingency, it is important for real estate contracts to specify if there will be a cash purchase or a financed purchase, because the two represent vastly different responsibilities on the part of the closing company.

cash throw-off Same as the noun version of cash flow, but rarely used. It is common, however, to say that a property is "throwing off cash."

castle, man's home as A concept rooted in English common law, from the case of *Anonymous*, King's Bench, 1506, reported at Year Book, 21, H.VII 39, pl. 50, holding that a person was entitled to defend his premises against intruders because "a man's house is his castle and his defense, and where he has a peculiar right to stay."

categorical taking A government regulation that deprives a property owner of all economically beneficial use of his or her property, and, as a result, constitutes a regulatory taking such as would justify requiring the government to pay the property owner for the loss.

caveat emptor Means "buyer beware." The legal doctrine followed in some states that sellers of real property are not required to disclose any defects except those inherently dangerous and not easily discoverable by the purchaser. Contrast with seller disclosure states that affirmatively mandate written disclosure of a wide variety of named deficiencies, plus anything else that might be deemed a property defect.

caveats Warnings. Frequently encountered in real estate disclosures or contracts with the words "to the best of the Seller's knowledge" or "but without aid of a structural engineer."

CBD See *central business district*.

CCA chromated copper arsenate; a pesticide that is forced into wood under high pressure to protect it from termites, other wood-boring insects, and decay caused by fungus.

CCIM See *Certified Commercial Investment Member*.

C-corporation A typical corporation that pays taxes on its income at the corporate level and then the shareholders are taxed on dividends distributed to them. Contrast with S-corporation, which has no taxes at the corporate level.

CCR See *conditions, covenants, and restrictions*.

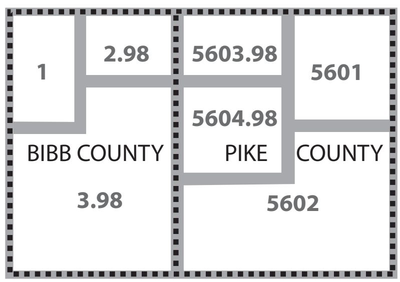
CD See *certificate of deposit*.

cease and desist An order from a government authority requiring one to stop engaging in some activity, such as construction without a proper permit. If issued from a court, it would be called an injunction.

ceiling (1) The uppermost surface of a room or space. When a lease makes all improvements "below ceiling" the responsibility of the tenant, one must ask if "ceiling" means the concrete bottom of the floor above, or if it means the suspended grid system with ceiling tiles. The space in between the two is called the plenum. All the wiring, plumbing, and ductwork go through the plenum, so the choice of which surface is the "ceiling" could mean a substantial difference in tenant responsibilities. (2) An upper limit on something, such as the IRS ceiling of $1,000,000 worth of home mortgage debt for which one can deduct mortgage interest.

cemetery lots A special land use designation authorized by statute. In many states, cemetery lots are exempt from real property taxes.

census tract A small, relatively permanent statistical subdivision within a county, generally containing 2,500 to 8,000 people and readily identifiable borders. Similar to block numbering areas (BNAs), but differing only in the local versus federal source of the data used to create the maps. Mapped and numbered by the U.S. government, which provides demographic information at www.census.gov. Third-party resellers of demographic information extrapolate from the census tract data into more personalized demographic areas.



central appraisal district (CAD) Employed when multiple entities are entitled to assess taxes based on the value of real property located within their shared borders. In order to avoid inconsistencies in appraisals and duplication of expenses, the multiple entities will organize and share the expenses of a central appraisal district.

central business district (CBD) Typically the downtown section of a city, generally containing the finance, real estate, insurance, and legal headquarters for the city.

Century 21 page A slang expression derived from the real estate franchise firm Century 21; describes a Web site that exists for no other purpose than to redirect you to another site. Web sites are often referred to as "real estate."

CERCLA See *Comprehensive Environmental Response Compensation and Liability Act*.

certificate of completion A document issued by an architect, engineer, or other qualified inspector attesting that the project has been completed in conformity with all plans and specifications; usually required before the construction lender will fund the final payment due under a construction loan.

certificate of deposit (CD) A receipt for money deposited in a financial institution.

certificate of discharge Also called a waiver of tax lien. An IRS release of tax lien so that property can be sold or foreclosed. (For more information go to the IRS Web site www.irs.gov and see Form 4422, "Application for Certificate Discharging Property Subject to Estate Tax Lien"; Form 783, "Instructions on How to Apply for a Certificate of Discharge of Property from Federal Tax Lien" (non-estate tax); and Form 786, "Instructions for Preparing Notice of Non-judicial Sale of Property & Application for Consent to Sale.")

certificate of eligibility A certificate issued by the regional Department of Veterans Affairs in order to indicate a person's eligibility for a VA loan.

certificate of estoppel See *estoppel*.

certificate of insurance A document issued by an insurance company to certify the extent and limits of coverage. Usually required by landlords as evidence a tenant is in compliance with lease requirements to maintain certain minimum levels of property and liability insurance. Also required by general contractors as proof the subcontractors have adequate insurance.

certificate of no defense Same as estoppel certificate. See *estoppel.*

certificate of occupancy (C/O) Almost always referred to simply as a "C.O." A document issued by a local government certifying that a structure has passed all required inspections and is ready for occupancy. It is always required at the completion of any construction when repairs require a construction permit. It is also often required when a property changes character from residential to commercial, even if no construction takes place, and is sometimes required before issuance of a new business license when a property changes hands. As a de facto method of enforcement, many utility companies will not permit service until receipt of a valid certificate of occupancy.

certificate of reasonable value (CRV) A document issued by the Department of Veterans Affairs as a prerequisite for a VA loan; it is based on an approved appraisal. It establishes the maximum value of the property for VA purposes and, as a result, the maximum size of the VA loan.

certificate of satisfaction A document filed in the public records certifying that a recorded lien on real property has been paid in full.

certificate of title A document issued by an attorney or title company certifying the status of title to real property and the absence or presence of title defects, liens, and adverse claimants. This is not the same as title insurance, because the preparer is liable only for negligence in the event of mistakes.

certified check A check drawn on the bank customer's account, with the customer as the drawer and the check certified by the bank as payable.

Certified Commercial Investment Member (CCIM) A designation awarded by the Commercial Investment Real Estate Institute after a member completes education, experience, and testing requirements. (For more information go to the Web site of the CCIM Institute at www.ccim.com.)

Certified General Appraiser An appraiser qualified to appraise any type of property, under rules adopted by the Appraisal Foundation (www.appraisalfoundation.org).

certified historic structure As defined by the IRS for purposes of the rehabilitation tax credit (popularly known as the historic preservation tax credit), any building, portion of a building, bridge, ship, railroad car, dam, or any other structure that is either listed in the National Register of Historic Places or located in a registered historic district and certified by the U.S. Department of the Interior as being historically significant to the district.

certified home inspector A home inspector certified under state licensing or certification programs.

Certified Property Manager (CPM) A professional designation awarded by the Institute of Real Estate Management (IREM) (www.irem.org), which is affiliated with the National Association of REALTORS®.

Certified Residential Appraiser A state certification for residential appraisers.

Certified Residential Broker (CRB) A designation awarded by the Council of Real Estate Brokerage Managers (www.crb.com), which is affiliated with the National Association of REALTORS®.

Certified Residential Specialist (CRS) A designation awarded by the Council of Residential Specialists (www.crs.com), which is affiliated with the National Association of REALTORS®.

cestui que trust (pronounced "seh tee kuh trust") The beneficiary of a trust.

chain A unit of measurement formerly used in surveying and still seen in deeds with old property descriptions. One chain equals 66 feet.

chain of title The history of all owners and lien holders of real property, together with the dates of their acquisition and the nature of their title, going all the way back to the first deed out of the government.

change order A written order from the owner, architect, engineer, or other authorized person to depart from previously agreed upon plans and specifications for construction. Change order management is a critical aspect of any construction job, as change orders frequently change the cost of the job, usually in an amount in excess of what might otherwise be expected. Many subcontractors bid jobs at break-even prices in order to secure the work, confident that numerous change orders will provide the profit necessary.

> **Example:** *An electrician might contract to perform all wiring and electrical work for a home for $2,000. Additional outlets added by change order might be billed at $65 each, even though the additional labor and materials might amount to only $5 each.*

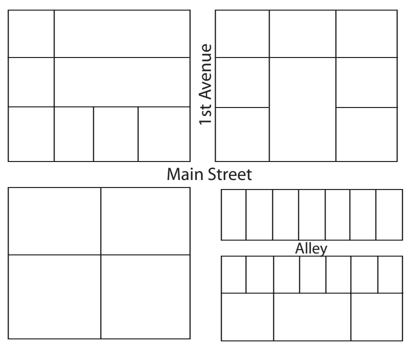
charge off To discontinue accounting for some or all of a promissory note and its accrued interest as an asset of the lender. If a loan is partially or totally uncollectible, then it is partially or totally worthless and cannot constitute an asset. This is an accounting function only; the lender may still pursue collection activities and then rebook the money as a cash asset when and if there is a recovery.

chattel Tangible personal property.

chattel mortgage A security interest in tangible personal property.

Check 21 Shorthand for the Check Clearing for the 21st Century Act; legislation that allows faster processing of checks by financial institutions by allowing them to process images rather than physical pieces of paper. The law also allows the creation of substitute checks that are processed immediately.

checkerboard development A traditional subdivision design with straight streets at right angles to each other and houses on evenly sized square or rectangular lots. Contrast with *cluster development*.



choice of law clause Frequently employed by a national company with real estate relationships in many states, the clause will state that the law of the company's headquarters will control any disputes between the parties. This is because the lawyers back at headquarters know their own law and know how to write contracts to protect themselves. If all their nationwide contracts were interpreted under the laws of the different states, it could be chaotic. Choice of law clauses are usually accompanied by forum shopping clauses, which specify which state's courts will hear disputes between the parties.

chronologic age The actual age of a thing, rather than its effective age.

circulation Areas in an office space that are used to travel between offices, cubicles and the like; hallways and corridors.

cistern A container for the collection of rainwater. Many historic homes had gutters and downspouts that routed all water into a cistern beneath the house to be used as a water source for cooking, cleaning, and in the event of fire.

civil law A system of laws with its origins in Roman and French statutes rather than the judicial decisions of English common law. See *common law*.

Civil Rights Act of 1866 Passed after the Civil War, this Act declared that all persons born in the United States were citizens of the United States without regard to race, color, or previous condition of servitude. All citizens were entitled to enter into and enforce contracts, and to buy, sell, lease, inherit, and pass by inheritance real and personal property. It prohibited discrimination in housing, but provided no enforcement mechanism other than private lawsuits. It was not until 102 years later, with the passage of the Civil Rights Act of 1968, that antidiscrimination laws could be truly enforced through federal actions.

Civil Rights Act of 1964 On November 27, 1963, newly sworn-in President Lyndon Johnson called for the passage of a new civil rights bill, as a tribute to the late President John F. Kennedy, who had been assassinated only weeks earlier. The resulting bill was signed into law on July 7, 1964, with a stated purpose: "To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes." It has come to be identified with halting discrimination in public accommodations—restaurants, hotels, and other public facilities.

Civil Rights Act of 1968 Expanded upon prior civil rights acts, especially the Civil Rights Act of 1866 and the Civil Rights Act of 1964. The Act was passed one week after the assassination of Dr. Martin Luther King. One improvement was the provision of federal solutions to aid in stopping discrimination. Title VIII of the Civil Rights Act of 1968 is also known as the Fair Housing Act. Additional information is available at the Web site of the U.S. Department of Justice, Civil Rights Division, www.usdoj.gov/crt/crt-home.html.

claim A demand, as of right.

Claritas A commercial provider of market research and demographic data (www.claritas.com). When marketing commercial real estate, it is common for the agent to obtain 1-, 3-, and 5-mile-radius demographic information regarding population density, median household income, and median home price for the most recent census survey with estimates of current data and projections of future data.

class (building) Subjective evaluation of the desirability of an office building based on its age, amenities, maintenance, and design. There are no hard-and-fast rules, and evaluations may change for a virtually identical building in two different markets. The classification is independent of the location; one commonly encounters comments such as "It's a class B property in a class A location," meaning a less desirable building happily situated at a great location and thus able to command higher rents than might otherwise be expected.

class A building A building of high-quality and well-designed with above-average finishes and features and the ability to attract first-class investors and tenants. New tenants typically offered a build-out allowance to customize their space.

class B building A building of good quality but without any extras; may have been designed as a no-frills building or may be a former class A building that has become dated in its design and finishes but is still well maintained. New tenants may be offered a build-out allowance, but it is typically sufficient only to repaint walls and replace floor coverings.

class C building An affordable office space with average to below-average maintenance. New tenants typically take space "as is," although carpets might be shampooed before occupancy.

Clean Water Act Legislation originally enacted in 1972, and amended several times since then, that establishes comprehensive national policies for water quality management. The laws are enforced by the Environmental Protection Agency (www.epa.gov).

clearance letter Also called a wood infestation report, provided by a licensed termite inspection company and attesting the absence of any evidence of active termite infestation. (This letter is a requirement of most lenders before closing may take place.)

clear-cutting The process of removing all vegetation from a site when harvesting timber, rather than cutting only the marketable trees. Some states require immediate reforestation of clear-cut timber lands. Purchasers of timbered land should be careful to word contracts so as to include the timber. In many states, once an owner signs a contract to sell timber, it ceases to become part of the real estate, is converted to personal property, and is not automatically covered under a sale contract for real property.

clearing and grubbing The stage of development in which vegetation is cleared from land (clearing) and a root rake or similar device employed to remove roots remaining in the soil (grubbing). The next stage is cutting and filling.

clear span The horizontal distance between supporting pillars, columns, or walls, being the maximum possible distance clear of obstacles. Especially when working with industrial properties, it is important to know the existing or required clear spans for clients.

clear-span facility A building, most often a warehouse or airplane hanger, with vertical columns on the outside edges of the structure and a clear span for the entire interior area.

clear title Good title; marketable title; title to real property without any defects, liens, mortgages or adverse claimants.

client The person to whom an agent owes duties of integrity, confidentiality, loyalty, and hard work. Contrast with customer, who is owed the duty of honesty.

close corporation A corporation comprised of a small number of individuals who contribute to the success of the business operations. Also called closely held corporation. Stock in close corporations is typically sale-restricted, so that shares must be first offered to the corporation or to the other shareholders before they can be sold to outsiders. Sale restrictions must be noted on the face of stock certificates, putting buyers on notice that an attempted sale may be void if all requirements have not been met.

closed-end mortgage A mortgage loan in which all sums have been funded at closing. Contrast with open-end mortgage, in which the principal balance may increase over time. A home loan is typically a closed-end mortgage; a construction loan is typically an open-end mortgage.

closely held corporation See *close corporation*.

closing The process of obtaining all necessary signatures, making all required disclosures, and collecting and disbursing all monies in order to transfer title to real estate, execute a mortgage, or both. Closings are regulated by the Real Estate Settlement and Procedures Act.

closing agent The person who performs a closing. The closing agent is typically not an agent of either party or of the lender, but simply the person entrusted to carry out all nonconflicting instructions from all parties.

closing company A company or firm that conducts real estate closings, also called settlements. The closing company does not represent any party to the transaction, but merely ensures that all documents are properly signed and all monies collected and disbursed according to the parties' contract.

closing costs Technically, only those fees and expenses necessary to close a sale or a mortgage, such as document preparation, the fee for the actual closing itself, and perhaps overnight delivery charges. In common language, though, the phrase has come to mean all expenses associated with a closing with the exception of the actual purchase price of the property and any lender fees. Rather than specifying that a buyer and seller will share closing costs equally, the better practice would be to spell out all anticipated expenses and the allocation for payment.

Examples of potential expenses include

- Preparation of closing documents
- Deed preparation
- Expenses associated with clearing title defects, such as preparation of affidavits or quitclaim deeds
- Title inspection
- Owners' title insurance
- Lender's title insurance
- Lender-required policy endorsements
- Deed recordation fees
- Mortgage recordation fees
- Transfer taxes (which can be sizable in the case of the New York mansion tax, for example)
- Closing agent fees
- Transfer fees imposed by condos, homeowners associations, or co-op boards

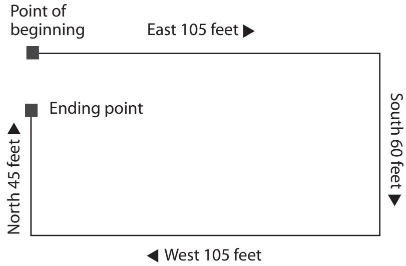
- Listing agent's commission
- Selling agent's commission
- Cost of wood infestation report and clearance letter
- Cost of survey
- Cost of appraisal
- Cost of required inspections
- Escrow fees
- Prepayment penalties
- Prorated real estate taxes, insurance, and/or dues

closing date The date on which the seller delivers the deed to the buyer and the buyer pays the agreed-upon consideration. Purchase contracts typically specify a closing date no later than a certain number of days or no later than a certain date. If closing does not take place on or before the designated date, then the party causing the delay is in default. As a practical matter, unless the contract recites specifically that "time is of the essence," then closing may usually be delayed several days without penalty or loss. In a seller's market, however, the better practice is to ensure that closing takes place by the agreed-upon date, or the buyer will risk loss of the property and sale to someone else.

closing protection letter Additional title insurance coverage insuring the lender against losses caused by errors or infidelity of the closing attorney or the closing agents in the handling of the transaction.

closing statement Written itemization accounting for all funds changing hands at a real estate or mortgage loan closing.

closure In a metes-and-bounds legal description of land, the necessity that the various calls and distances culminate at the point of beginning, so the shape described is "closed." If the shape is not closed and the property description is inaccurate in some regard, then the transaction violates the statute of frauds and the transfer is void. The drawing to the right is of a property description without closure.



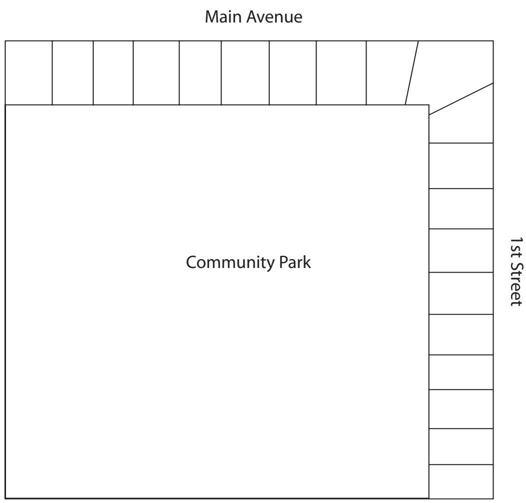
This property description has no closure.

closure document A document written by a state environmental protection agency certifying that a previous environmental hazard no longer bears further scrutiny because it has been remediated.

cloud on title Something that appears on its face to constitute a defect in title or a claim against property, but which may be cleared through the execution of affidavits, quitclaim deeds, or corrective deeds, or by means of a lawsuit called an action (or bill) to quiet title.

cluster development A subdivision planning design in which housing is clustered together on relatively small lots with a larger amount of common area shared by all; also called open space development and conservation subdivision. Requires some sort of homeowners association with the ability to assess dues in order to maintain the common area. Contrast with *checkerboard development*.

cluster zoning Zoning that specifies housing density for an entire area overall, leaving a developer free to use some space for high-density housing such as apartments or garden homes, and other space for low-density estate-sized lots. Contrast with traditional zoning ordinances that specify the same density for each and every lot within an area.



CMA See *comparative market analysis*.

CMBS See *collateralized mortgage backed securities*.

CMO See *collateralized mortgage obligation*.

CMO REIT A real estate investment trust that specializes in collateralized mortgage obligations.

C/O See *certificate of occupancy*.

cobroker See *cooperating broker*.

code (1) Any systematic collection of laws, regulations, or rules. (2) Shorthand for any of the various building codes, such as, for example, "This historic property has been updated and meets all current code requirements."

code of ethics Any written system of standards and ethical considerations for the persons bound. All state real estate licensing organizations have their own codes of ethics; most are based on that of the National Association of REALTORS®, which is available at www.realtor.org/mempolweb.nsf/pages/code?opendocument.

COFI See *cost of funds index*.

coinsurance A method of dividing financial responsibility for a loss between the owner and the insurance company. Coinsurance clauses exist within insurance contracts as a type of penalty for an owner who decides to gamble about the size of any potential loss and insure property for less than the full value in order to keep premiums low. They usually provide that an owner may not collect full policy limits for a loss unless the property has been insured to at least 80 percent of its value.

COLA (pronounced like the beverage) See *cost-of-living adjustment*.

cold call To make unsolicited contact with persons for the purpose of making a sale. In real estate, new agents will often cold call entire neighborhoods in an attempt to obtain listings.

cold canvass See *cold call*.

collapsible corporation A former tax-planning tool allowing conversion of ordinary income to capital gains through the vehicle of a corporation set up and then quickly "collapsed" by a sale or exchange of the stock or a liquidation. Today, the vehicle has been largely penalized out of existence by the IRS. If the corporation is collapsed and the stock sold within 3 years of formation, sale proceeds will be treated as ordinary income although such a holding period would otherwise qualify for capital gains treatment. See also *thin corporation*.

collateral Security for a debt.

collateral heir An heir who is not in a direct line from a decedent, but born from a collateral line, such as brothers and sisters, aunts and uncles, or cousins. Relevant in the context of intestate succession, being the order of distribution of property when one dies without a will. Contrast to lineal heirs.

collateralized mortgage obligation (CMO) A security or bond backed (collateralized) by a pool of mortgages. The issuer of the security segmented the cash flow in such a manner that it could create bonds with maturities at differing dates and appeal to a broad spectrum of investors. Today, the CMO has largely been replaced by the REMIC—real estate mortgage investment conduit—although the terms are often used interchangeably.

collateralized mortgage backed securities (CMBS) Derivative investments created by aggregating mortgage loans into pools and then selling interests, much like bonds, which entitle owners to payments over time until the debt is finally retired. (Note: Commercial mortgage backed securities, a specialized type of collateralized mortgage backed securities, are also known as CMBSs.) The concept is best understood by reference to the various parties involved:

- A loan originator, such as a commercial bank, mortgage banker, or insurance company originates mortgage loans.
- An investment bank acts as an intermediary and sponsors the conduit by purchasing the commercial mortgage loans and warehousing them until they are ready to be converted to securities.
- A rating agency rates the underlying mortgages as AAA, AA, A, BBB, and so on down to CCC, with AAA to BBB being classified as investment-grade and BB downward classified as below investment grade.
- The same investment bank previously mentioned now separates the mortgages into tranches, or classes, of bonds depending on their ratings. The tranches are then offered for sale as securities backed by the entire mortgage pool. One might buy investment-grade tranches, but they are backed by all the loans, not just the investment-grade loans.
- Investors purchase the securities. Investment-grade tranches are usually purchased by insurance companies, pension funds, mutual funds, money managers, and commercial banks. Below-investment-grade tranches are sold to real estate investment funds or CMBS servicing entities.
- A servicer collects mortgage payments, monitors delinquencies and defaults, engages in workout procedures or initiates foreclosure, and handles all accounting and reporting, paying over monies periodically to the trustee for distribution to the investors.

- The trustee, who represents the trust that holds legal title to the mortgages for the benefit of the certificate holders, pays out money to investors according to the terms of their securities. The most common arrangement is the "waterfall" payment, in which class A bond holders receive principal and interest payments in the early years, while class B and class C holders will receive only interest. After a fairly short predetermined period of time, the class A bond holders will have been paid in full, and their bonds will be retired. At that point, the class B holders will begin to receive principal in addition to interest, but the class C holders will still receive only interest. When class B holders have been paid in full, class C holders will begin receiving principal payments. As a result, the class C holders will suffer if there are significant defaults and not enough money to pay everyone in full. For that reason, class C holders generally receive a higher return on their investment.

colonia Residential areas along the United States side of the border with Mexico and that may lack some of the most basic living necessities, such as potable water and sewer systems, electricity, paved roads, and safe and sanitary housing. The Environmental Protection Agency estimates there are more than 1,300 colonia in Texas and New Mexico alone.

color of title The appearance of title to real property, such as a deed that turns out to be defective. Important because those with color of title are given more rights than those who have no color of title, but a mere possessory or other such claim.

Color of Title Act This act, 43 U.S.C. §1068, authorizes the secretary of the interior to issue a patent—original deed from the government—to a person who has occupied a certain area of land for at least 20 years with color of title, under circumstances that would otherwise constitute adverse possession if it were not for the rule prohibiting adverse possession against the government. The occupier is able to tack his or her possession on to that of his or her ancestor or grantor, in order to arrive at a cumulative time of 20 years or more.

commencement of work The readily observable date on which work commences on a construction project. This date is important in the context of mechanics' and materialmen's liens for unpaid construction bills, because the date of the lien is effectively backdated to the date of commencement of work, even though there may not have been a failure to pay bills until many months later. In many states, if there is a lien filed, and the commencement of work occurred before the construction mortgage was recorded, then the lienholder is in a first lien position and the construction lender is in second place, comparable to having a second mortgage rather than a first mortgage.

commerce clause of the constitution Article I, Section 8, Clause 3 of the United States Constitution. This clause empowers Congress "to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." The commerce clause has provided the most powerful tool available to the federal government for spreading its legislative and regulatory reach into the lives of everyday Americans.

commercial bank A financial institution authorized to receive both time (savings accounts, CDs) and demand (checking accounts) deposits, to make loans of various types, to engage in trust services, to issue letters of credit, to accept and pay drafts, to rent safety deposit boxes, and to engage in similar activities and ventures.

commercial creep The gradual encroachment of commercial real estate into residential areas.

Commercial Investment Real Estate Institute A professional organization, which is an affiliate of the National Association of REALTORS®; specializing in commercial real estate and offering the designation CCIM—Certified Commercial Investment Member. The name of the institute has now been changed to the CCIM Institute (www.ccim.org), but the old name is still frequently encountered.

commercial lease A lease of space for nonresidential purposes.

commercial leasehold insurance Insurance to cover the payment of rent in the event a tenant defaults.

commercial lender An entity that routinely loans money as part of its core business. Contrast with a seller who loans money as part of a real estate transaction, or private investors who loan money sporadically as a good opportunity presents itself.

commercial mortgage backed securities (CMBS) Collateralized mortgage backed securities with an underlying pool of commercial (non-residential) loans. See also *collateralized mortgage backed securities.*

commercial mortgage banker A banker who specializes in originating commercial mortgage loans.

commercial mortgage loan A loan secured by a mortgage on real estate that has a business or investment purpose.

commercial property Property designed for use as offices, retail space, or wholesale, hospitality, or similar uses. Contrast with multifamily residential (apartments), residential development, or industrial property.

commercial real estate Typically refers to office or retail space, or multifamily residential properties such as apartments. May include industrial real estate, but sometimes the phrase is meant to exclude industrial properties and must be read in context.

Commercial Real Estate Women (CREW) A national organization (www.crewnetwork.org) founded in 1989 with the goals of "advancing the success of women in commercial real estate" and "achieving parity in opportunity, influence and power in the industry."

commingle (also spelled co-mingle) It is illegal for real estate brokers to combine (or commingle) clients' funds with the broker's business funds in one account, even if all monies are accurately accounted for and there have been no other improprieties. Client funds do not have to be separated from each other, but can all be commingled in one escrow account.

commission The compensation paid to a real estate broker for services rendered in connection with a sale, exchange, or lease of property. In order to be entitled to a commission, the broker must have a written contract for the services and must be licensed in the state. Generally the commission is fully earned if the broker produces a buyer who is ready, willing, and able to close at the terms specified in the listing agreement. This is true even if the seller elects not to accept the offer and withdraws the property from the market or increases the price.

Commission rates. Commissions are negotiated independently between the parties. Setting commission rates in advance by local real estate boards or other organizations is a violation of federal law. Most listing agreements now contain a disclaimer advising that commissions are separately negotiated on a case-by-case basis.

Sales commission amounts. Typically expressed as a percentage of the gross sales price of the property, usually ranging from 6 to 10 percent, although higher and lower percentages may be negotiated.

Leasing commissions. Compensation paid to an agent upon lease execution. It is usually calculated as a certain percentage of the total anticipated rent payments, up to a 5-year term.

Example: *If the leasing commission is 4 percent on a 5-year lease at $12,000 per month, then multiply $12,000 by 60 months to arrive at $720,000 and the broker is paid 4 percent, or $28,800. The parties may negotiate a lesser percentage for a term longer than 5 years, to be paid at the 5-year anniversary date.*

Leasing commissions—lump sum. Sometimes negotiated to be equal to one or two month's rent, or even a certain amount per square foot. The drawback to this method is that the broker is compensated the same for a 3-year lease as for a 10-year lease.

Leasing commissions—payment over time. Occasionally, leasing agents prefer to receive their commissions as each payment of rent is made, rather than in a lump sum at lease signing. The effect is to provide a guaranteed income for many years.

commissioner An officer charged with the administration of laws or regulations pertaining to a particular subject matter, such as a real estate commissioner. A directory may be found at the Web site of the Association of Real Estate License Law Officials (ARELLO) at www.arello.com.

commission rates See *commission*.

commission splits Listing brokers will typically split their commission with the selling broker—the person who provides the buyer for the property. One should always inquire, however, because some brokers refuse to split commissions, preferring to find their own buyers and keep 100 percent of the commission rather than work with other brokers in the area.

commitment (loan) An agreement by a lender to extend a loan on certain terms and conditions and by a certain date. Language making the "commitment" subject to credit approval or underwriting are not true commitments at all, but merely quotes.

common area maintenance (CAM) ("CAM" is pronounced as a word) Costs required for a tenant's pro rata share of the upkeep of common areas and amenities such as the parking lot, external lighting, trash removal, and street cleaning. When obtaining quotes for retail space or office space, one should always ask about tenant CAM expenses, because a lower per-square-foot rental rate at one location may be offset by high CAM expenses.

common areas (1) In leaseholds, the area over which the landlord retains exclusive control and liability, such as stairwells and hallways. (2) In condominiums, all property except for the specific condominium units themselves. Common areas are owned by all condo owners in common with each other, except that access may be restricted for plumbing, electrical, and other such areas, or it may be semirestricted so that all condo owners own a portion of your balcony, but you are the only one entitled to use it.

common enemy rule A rule of water management and rights followed in some states. It holds that excessive rainwater is a common enemy that damages property at random. Uphill property owners can take any steps to protect their land from the water, even if it causes damage to the property of others further down the hill. The downhill property owners are supposed to protect their own land, because water is the common enemy and everyone has to provide their own protection. Today, most states have modified rules that require everyone to act reasonably under the circumstances in order to protect their own property and avoid damaging the property of others.

common law A law derived from common usage, ancient customs, or the pronouncements and interpretations of courts. Contrast with code law, or civil law, which relies on statutory enactments for the articulation of rights and responsibilities, and then judicial interpretation of those statutes. English law, and almost all American law, is based on common law. The law in France is based on the Napoleonic code, and the law in Louisiana is based on that code also. (Because of the completely different underpinnings of Louisiana law, it is rare to find a lawyer or real estate agent outside the state who will offer an opinion regarding real estate law within the state.) When reading definitions of words, one should pay attention to whether the definition recites "at common law" or "at civil law."

Community Association Institute An umbrella association for condo associations, homeowners associations, and other community groups, providing information on management, governance, and legal issues. It estimates that 57 million Americans lived in association-governed communities in 2006. The Web site of the Community Association Institutes is at www.caionline.org.

community property Property owned by a husband and wife, each owning an undivided one-half interest by virtue of the marital relationship and not by virtue of any deed or other document of specific intent. There are exceptions for family property inherited from one side or the other. The community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington.

Community Reinvestment Act (CRA) An act passed by Congress in 1977 to encourage financial institutions to meet the credit needs of the communities in which they operate, including low- and moderate-income neighborhoods. Compliance is monitored via regular audits, and a poor record of CRA compliance is taken into consideration when the financial institution applies for deposit facilities, including mergers and acquisitions.

One may find a financial institution's rating for CRA compliance by visiting the Web sites of the various regulatory agencies that track compliance. A financial institution may appear on one list but not others, depending on which agency has responsibility for that bank and its CRA compliance. The possibilities are

Federal Reserve Board (www.federalreserve.gov)
FDIC (www.fdic.gov)
Office of Comptroller of the Currency (www.occ.treas.gov)
Office of Thrift Supervision (www.ots.treas.gov)

community shopping center A shopping center of approximately 100,000 to 300,000 square feet and 20 to 70 retail spaces, designed for a mixture of retailers and food service establishments with a high convenience factor for a market area radius of 3 to 6 miles. Usually situated on 10 to 40 acres, with at least one anchor tenant; anchor(s) typically comprise 40 to 60 percent of the gross leasable space.

compaction The process of compressing soil used to fill the low areas in a parcel of land. Developers typically obtain soil compaction reports before beginning development, but care must be taken to test more than the typical 6-foot depth. It is a common practice for excavating companies and unscrupulous landowners to use substandard fill material, such as tree trunks and other vegetation that will eventually decompose and reduce volume, and then properly compact only the top 6 feet of fill. Over time, the property will settle, possibly resulting in severe structural problems.

compaction tests See *boring tests*.

comortgagor An additional borrower with some interest in the real property that is the subject of the mortgage.

comparables In an appraisal, recently sold or leased properties similar to the property under analysis, such that a review of the sales prices of the comps will assist in determining a value of the subject property. The properties need not be identical, as long as they are reasonably similar and the appraiser can make adjustments for features that differ. These may include property amenities, age of the improvements, traffic counts and market area, time and conditions of the sale, and anything else recognized by the market as having value.

comparative market analysis (CMA) An analysis of the value of property by taking only a very few market indicators, such as price per square foot for land or price per unit for apartments, and then extrapolating to the property under analysis. This does not constitute an appraisal, but may give prospective sellers a basis for setting a sales price for listing purposes.

comparative negligence A legal theory in some states that evaluates the negligence of a wrongdoer against any negligence of the injured party that contributed to its injuries, and then assigns a pro rata responsibility for the harm suffered.

Example: *If a property owner allows a loose step to remain unrepaired, and a guest loses his or her balance and falls, the property owner has been negligent. If, however, the guest was* *intoxicated, a jury might decide the guest was 25 percent responsible for the injuries. In such a case, the jury will calculate a dollar value for the injury and associated expenses and will then reduce it by 25 percent in order to arrive at an award.*

Contrast with contributory negligence, which denies any award at all if the injured party was at all negligent under the circumstances.

comparative unit method An appraisal technique in which direct and indirect costs are totaled and then divided by an appropriate unit to obtain a cost per unit.

Examples include

- Land compared on a value per square foot
- Land compared on a value per front-foot
- Self-storage facilities compared on a value per unit
- Hotels compared on a value per room

comparison method See *market comparison approach*.

compensation (1) Payment for goods or services. (2) Damages necessary to restore an injured party to his or her position before the wrongdoing. (3) In eminent domain, payment to property owners for the value of the property taken and any damage caused to the value of the remaining property.

compensatory damages Damages intended to compensate the injured party for the harm suffered. Contrast with punitive damages to punish the wrongdoer, and nominal damages awarded to recognize that a right was violated or a duty breached, but no harm done.

competent (1) Duly qualified; having sufficient ability or authority. (2) Having the legal ability to testify about a particular subject. In real estate, the concept is important because property owners are usually competent to testify about the value of their property before a loss and the value of their property after a loss. In other words, it is not legally necessary to hire an appraiser to testify, although it is prudent as a practical matter.

competitive market analysis See *comparative market analysis*.

complete appraisal An older term rendered obsolete by the July 1, 2006, changes to the Uniform Standards of Professional Appraisal Practice, but still frequently encountered. The term used to mean an appraisal that did not resort to using any of the departure provisions of the old rules. Previously, all clients had to be provided with a complete appraisal unless the client signed off and approved a limited appraisal noting specific appraisal methods not employed because they were perhaps not relevant to the specific property. Today, the new scope of work rule allows the appraiser to choose the analytical methods necessary to meet the client's objectives and the scope of work, but the client does not have to approve the methodology.

completion bond A fidelity bond posted by a contractor or developer to guarantee that a particular project will be completed according to plans and specifications, on time, and without any liens incurred as a result of unpaid bills to subcontractors and suppliers; usually required as a condition of performing government work. It provides more coverage than a simple performance bond, which ensures that one party will perform if the other will perform, usually by payment. The completion bond is independent of any underlying contracts and any defenses to those contracts.

compliance inspection (1) An inspection by a government official to ensure that a building or project complies with all relevant building codes and zoning regulations. (2) An inspection by the representative of a lender to ensure that all lending institution requirements have been met as a prerequisite to a loan or as a condition of funding advances on a construction or development loan.

component building A building made of prefabricated components that are then delivered to the construction site and assembled. In housing, the modular home is an example, although a manufactured home that is assembled elsewhere and delivered to the site would not be a component building. Components could include tilt-up concrete walls popular with commercial construction, and structural insulated wall and roof panels (providing rigidity, sheathing, insulation, wire chases, and sometimes even outside and inside finishes all in one product) for residential construction. The ultimate component building is an apartment building of self-contained apartment rectangles built elsewhere and then stacked together like children's building blocks.

component depreciation A former practice of separating a building into its various components—walls, roof, etc.—and then depreciating each component separately, some more rapidly than others, in order to generate large tax deductions. (This is no longer allowed by the IRS, except in a modified form called cost allocation.)

compound interest The process of charging, or earning, interest on interest. Interest accrued in prior periods is added to the principal, and then interest in the current period is calculated on the total.

> **Example:** *If you saved $100 per month, starting at age 25, at an earnings rate of 5 percent per annum, you would have $144,959 by age 65, only $48,000 of which would be money you contributed. To perform your own calculations, use the following formula to create a Microsoft Excel spreadsheet:*
>
> *=FV(Interest Rate, Number of Years, Savings per Year)*–1*

For Interest Rate enter the cell address where you will note the interest rate you expect to earn; for Number of Years enter the cell address where you enter the number of years you expect to save the same amount each year; and for Savings per Year enter the cell address where you will enter the amount you expect to save each year.

	A						
1	0.05						
2	40						
3	1,200						
4	=FV(A1,A2,A3)*–1						

Comprehensive Environmental Response Compensation and Liability Act (CERCLA) Federal laws passed in 1980 and known commonly as the Superfund. The law imposes strict liability for cleaning up environmentally contaminated land—one's liability does not depend on any fault or responsibility, but simply on one's status as any of the following:

- A past or current owner of a facility
- A past or current operator of a facility (such as a tenant or property manager)
- A generator of hazardous substances
- A transporter of hazardous substances

Because of potential cleanup liability for the actions of previous owners, it is essential that any purchaser of commercial property investigate a property history for evidence of manufacturing processes, petroleum-related businesses such as gas stations, dry-cleaning plants, transmission repair shops, and any number of other activities. In the alternative, one may order a Phase I Environmental Report from a licensed engineer. As a practical matter, most lenders will require the report as a condition of providing funds for purchase.

At one time, there was some confusion over a mortgage lender's potential exposure to liability by virtue of possibly being considered an "operator" when involved in management decisions during a loan workout. There was also great fear about lender liability after foreclosure, when the financial institution became an "owner." This has largely been cleared up through CERCLA amendments providing limited lender immunity provided there is appropriate due diligence before credit extension. Due diligence is usually resolved through requiring a Phase I Environmental Report from a licensed engineer, and then a Phase II report if the Phase I report indicates any suspicious evidence. After foreclosure, the lender can avoid liability if it takes steps to sell the property as soon as possible.

When selling or buying property, it is important for the sales documents to include a provision allocating financial responsibility in the case cleanup is necessary in the future. Parties may not disclaim responsibility under CERCLA, but they may contractually agree regarding who will bear the ultimate cost of a cleanup.

For more information regarding this complex subject, visit the Superfund pages of the Environmental Protection Agency Web site at www.epa.gov/ebtpages/cleasuperfund.html.

comps Shorthand for comparable properties, used in appraisal.

computer-aided design (CAD) The use of computer software to assist in performing standard architectural and engineering design services. Products range from the most basic shareware home design and landscaping software to sophisticated systems with three-dimensional flyover and walk-through capabilities, project budgeting, and timeline creation.

computerized loan origination (CLO) A computerized network of major lenders that uses artificial intelligence to evaluate loan application data entered online by agents and determine loan eligibility and terms. HUD has approved the procedure as long as there is full disclosure of the fee, multiple lenders are displayed on the screen to give borrowers freedom of choice, and the fee charged is a dollar amount rather than a percentage of the loan.

concession (1) A discount, rebate, or abatement. Lease concessions may consist of free rent, below-market rent, a larger than normal build-out allowance, reserved parking, 5-year anniversary renovation allowance, or any number of other economic incentives to induce one to lease in a particular building. When investigating the purchase of an income-producing property, one should examine each and every lease in its entirety to determine the existence of any lease concessions that would adversely affect an economic analysis of the property, and one should also obtain estoppel certificates from tenants so that there are no agreements outside the terms of the written leases. (2) A business that operates within the confines of another business or on another property, but usually without a lease. Examples include a shoe-shine concession at the airport, the hot-dog concession at the ball park, or the designer fragrance concession in a department store.

concession burnoff The process of rent concessions becoming less frequent, smaller, or both, so that the market sees growth in overall rental rates because of the discontinuance of temporary concessions, not because of a true increase in market rates.

conciliation agreement A settlement or compromise agreement between a regulatory agency and an individual or entity charged with violating rules, regulations, or laws. The agreement evidences an acknowledgment of past wrongdoing and an intention to correct the consequences of the past actions and to desist from future violations.

concurrent ownership Ownership by two or more parties at the same time. The most common examples of concurrent ownership are

- Tenants in common
- Joint tenants with right of survivorship
- Tenants by the entireties
- Community property interests
- Tenants in common with cross-contingent remainders

condemnation (1) A proceeding to obtain private property for public use through the exercise of the government's rights of eminent domain. Historically considered possible only for public improvement projects such as roads, schools, and courthouses, the landmark U.S. Supreme Court case of *Kelo v. City of New London*, 125 S.Ct. 2655 (June 23, 2005) held that local government could condemn land belonging to one private party in order to convey it to another private party as part of an economic development plan to increase government revenues, add jobs, and improve the quality of life in a depressed area.

In a condemnation case, the government will order an appraisal of the property and then offer the owner the appraised price, or perhaps a negotiated amount in excess of the appraisal but taking into account the savings realized by not having to litigate the issue. If the property owner does not accept, the government must escrow the amount of money determined by its appraisal and may then proceed with condemnation of the property. The parties may then go to court to contest the amount of the required award, but the contest will not prevent or delay condemnation of the property.

Specialized tax rules apply whether property is condemned, sold to the government under threat of condemnation, or sold to a third party under reasonable fear of impending condemnation (see IRS Publication 544 at www.irs.gov). Taxpayers may defer income realized in a condemnation award by purchasing replacement property within 2, 3, or 5 years, depending on the particular circumstances.

Payments to cover the costs of relocating are not part of the condemnation award and are not taxable income. Severance damages awarded because of damage caused to the remaining property are not part of the condemnation award. The amount of damages will reduce the basis in the remaining property. If it reduces the basis to $0, then any excess must be reported as gain, but taxation can be deferred.

(2) A decision by local government that property owned by another is no longer safe and must be repaired or demolished. It is not a defense that the owner is making no use of the property and is not exposed to any danger, so long as the public at large may be exposed to danger. If the owner fails to make the necessary repairs or take any other action, the government authority may conduct the demolition itself and place a lien upon the property for the costs of demolition.

condemnee One whose property is condemned.

condemnor One who condemns property.

condition A future and uncertain event that determines whether or not there will be a contractual obligation or liability. Conditions may be express or implied, possible or impossible, lawful or unlawful, affirmative or negative, precedent or subsequent, positive or negative, and, finally, single, copulative, or disjunctive. Each type of condition has different legal consequences.

Examples of the most common types encountered in real estate are

- Express. If the purchaser cannot obtain financing, the purchaser may cancel the contract.
- Implied. If the seller burns down the house the day before closing, the purchaser may cancel the contract.
- Lawful. If the broker produces a buyer willing and able to pay the asking price, the seller will pay a commission of 6 percent of that price.
- Unlawful. If the broker produces a buyer willing and able to pay at least $125,000, the broker will be paid all the purchase price in excess of $125,000.

conditional commitment An agreement by a lender to extend a loan with specified terms, but only if certain conditions are met, such as retention of occupancy rates at a certain level until the time of closing, securing of key man insurance for an important manager-owner, release from a contingent liability that might impair the borrower's financial condition, or any number of other conditions.

conditional offer An offer to buy real estate conditioned on the occurrence of one or more things before the purchaser is obligated to buy. Examples include zoning changes or the ability to secure a contiguous property.

conditional sales contract (1) A sales contract in which the buyer is given possession and use of the item sold, but the seller retains legal title until all payments have been made in full. Equipment leases for a term of years, at the end of which the buyer pays $1 to buy the property, have been characterized by the IRS as conditional sales contracts rather than true leases. As a result, the taxpayer is not allowed to deduct the full lease payments each year, but only an amount equal to the depreciation available if the property had been purchased for cash, plus an allocation for interest. This amount is usually less than the annual lease payment. (2) If pertaining to real estate, commonly called a bond for title, land sale contract, or contract for deed.

conditional use permit (CUP) (pronounced "cup") A permit granted to a property owner to make use of real property in a manner allowed under current zoning regulations, but only in accordance with conditions to be applied by the zoning authority. Houses of worship may be allowed in areas zoned for residential use, but the applicant may be required to obtain a conditional use permit that can be predicated on size, off-street parking availability, indirect nighttime lighting, and other such factors determined on a case-by-case basis. Contrast with variance, in which the property owner is given permission to use the property in a manner inconsistent with current zoning regulations.

conditions, covenants, and restrictions (CC&Rs) Rules incorporated by reference into the deeds of condominiums and individual lots in subdivisions with homeowners associations and/or restrictive covenants. The CC&Rs set out restrictions on the use of property, and even on the behavior of residents.

condo cowboys A derogatory term among condominium developers used to refer to inexperienced persons with little training, experience, or capital, but who decide to engage in condo construction or conversion. Such people often ignore established methods and principles of development and marketing, frequently encounter financial difficulties requiring additional financing at high interest rates, and then dump units on the marketplace with little or no profit margin but with the net effect of forcing down prices in the entire market.

condominium A system of ownership in a multiunit development allowing individual ownership of some areas and common ownership of all other areas. The identifying feature is the legality that common areas (entrance, hallways, elevators, swimming pool, parking, etc.) are owned by all members of the community in common with each other, rather than being owned by a separate corporation or association. Residential condominium projects may be multistory apartment-style residences or may resemble traditional detached housing or garden home communities.

condominium conversion The process of converting a building with tenants, or a cooperative building with tenant-shareholders, into a community of individual owners of specified units and common owners of all common areas. Many states have laws protecting tenants in a building scheduled for conversion. Protections may include lengthy notice periods regarding the plans to convert, prohibitions against drastic rent increases designed to force tenant flight from the building, an exclusive period during which only the tenant may purchase the unit before exposure to the general market, and special protections for the elderly and disabled.

condominium declaration The document that establishes the legal existence of the condominium project and the ability to divide airspace into horizontal layers of ownership. The condominium declaration must be filed with the designated public official for the state or county where the land is located.

condominium owners association An association that automatically includes as members all persons who own condominium units in a defined project. Unlike subdivisions, in which the homeowners association often owns the common lands, the condominium owners association does not own the common areas—the unit owners own them in common with each other. The association does enforce the provisions of the covenants, conditions, and restrictions and manages the financial, legal, and maintenance business of the community.

condotel A relatively recent concept involving a melding of a resort hotel with condominium ownership. Initially became popular after September 11, 2001, when it became difficult to obtain financing of more than 50 percent of the cost of acquisition or development of a hotel property. To raise the additional necessary capital, developers sold individual units to investors and users, with the promise to rent the units to hotel guests and pay over profits to the individual owners. In recent years the practice has become less common with regular hotels, but remains strong with resort developments. The Securities and Exchange Commission, and several plaintiffs' law firms, have recently taken the position that such relationships involve the sale of securities, thereby requiring registration, disclosure, adherence to strict accounting standards, and many other requirements.

conduit A metal pipe through which electric wiring is run. Building codes often require that all electric wiring for commercial buildings must be in conduit and securely attached to the ceiling, not suspended from dropped-ceiling supports or other building components.

conduit financing A method of providing loan money through a debt instrument that blends features of a traditional pass-through mortgage security and a bond. Traded on Wall Street as securities known as REMICs—real estate mortgage investment conduits. For real estate borrowers, the single most important feature of conduit financing is the very large prepayment penalty imposed on all such transactions. The success of the entire securitization process depends upon trustee receipt of regular monthly income for distribution to bondholders according to a prearranged schedule. If a borrower pays off the loan early, that loan will no longer earn any interest, which affects the money available for payment to investors. In order to compensate, the trustee will have to go out into the marketplace and purchase an investment to replace the mortgage paid off. That investment may cost a premium price, so the prepayment penalty is used to offset the premium.

conduit tax treatment Income passing through an entity without taxation at that level, but only at the recipient's level. A subchapter S-corporation, a partnership, and a limited liability company are all examples. Contrast with a C-corporation, which pays income taxes on profits and then uses after-tax dollars to pay dividends to shareholders, who pay taxes on the dividends.

confirmation of sale A court approval of a sale by a trustee, executor, administrator, guardian, or bankruptcy trustee. Sales contracts by such persons are always specified as contingent on court approval.

confiscation Seizure of private property by the government without compensation to the owner, usually as a consequence of the owner being convicted of a crime.

conflict of interest A situation that presents the possibility of having to choose which side in a transaction will receive the better service, deal, terms, or representation. The conflict may be choosing between two other parties, such as an agent attempting to represent both buyer and seller in a particular transaction, or it may be between the party and another, such as a real estate broker wishing to purchase property listed with that same broker. Rules regarding handling conflicts of interest generally provide a solution through full disclosure to all parties involved or withdrawal from the situation entirely.

conforming loan A loan that meets the underwriting requirements necessary for sale to Fannie Mae (FNMA—Federal National Mortgage Association) or Freddie Mac (FHLMC—Federal Home Loan Mortgage Corporation). There is nothing derogatory about a nonconforming loan; it may be too large, it may be for a property flipped within the prior 90 days, or any number of other disqualifying reasons besides creditworthiness or value of collateral.

conformity principle An appraisal principle holding that the more a property's components are in harmony with the surrounding properties or components, the more they contribute to value.

> **Example:** *A 5,000-square-foot home with a three-car garage and an inground pool is more valuable in a neighborhood filled with similar properties than it would be in a neighborhood of 2,500-square-foot homes with two-car garages and no pools.*

congregate housing Also called supported housing, with private living quarters and shared dining and social areas. Housing for the elderly and disabled is generally congregate housing, as are dorm rooms for students.

consent decree A judgment in which the defendant agrees to take some action, or to cease doing something the plaintiff deemed objectionable, but without admitting any wrongdoing.

consequential damages (1) Damages that do not flow directly from some wrong, injury, or taking. A buyer who refuses to proceed to closing for no legal reason may be liable for the seller's *direct* damages of the difference between the agreed-upon purchase price and the price ultimately obtained for the property, or the interest on the money if the sums are identical, plus any additional costs of marketing. The buyer might also be liable for the seller's *consequential* damages consisting of its loss of earnest money on another property, but only if the buyer knew the seller was depending on the closing to fund money for the seller's new home. (2) In a condemnation award, consequential damages are those suffered when the remaining property is injured because of the loss of the condemned property. A farmer's fields may be too small for efficient cultivation by large machinery after the county condemns enough land for roads to cross through the fields. A storekeeper's business may suffer as a consequence of its parking lot being taken for construction of a fire station.

conservation easement A voluntary restriction on land preventing development on the property in order to retain its natural condition. The restriction will remain on the property for all subsequent property owners unless it can be successfully removed by court order or by agreement of all affected parties. See *easement*.

conservation subdivision A housing development where homes are clustered together on smaller lots to preserve the surrounding natural area or farmland, which is often then owned and managed by the community.

conservator A guardian, receiver, or other protector appointed by a court to manage the assets of someone suffering from a permanent or temporary disability that prevents the person from managing his or her own affairs. A person need not be adjudged mentally incompetent to have a conservator appointed, and the appointment does not disqualify the person from entering into contracts, making or changing wills, or any other such legal rights.

consideration An act or a promise given by one person in exchange for an act or a promise from the other. The values do not have to be equal, and it has been said that one may promise to give a barleycorn in exchange for the promise to deed a castle, and it will be sufficient. It is a common misperception that earnest money is the component that makes a real estate contract enforceable. In reality, the promise to buy, and the promise to sell, is sufficient consideration. Consideration is an essential element for contract enforcement.

Consideration substitutes. Sometimes the law will permit enforcement of a contract even though one side or the other did not give consideration, if there was an allowed consideration substitute. The most common one is detrimental reliance, in which one person promises to do a thing gratuitously and another worsens his or her position in reliance on that promise. Under ordinary circumstances this would be a mere promise to make a gift, and unenforceable. Because of the detrimental reliance, however, it may become an enforceable contract.

Adequate consideration. If this is required by law, the consideration must be reasonably close to the value of the thing promised or exchanged.

Good consideration. The consideration is based on natural duty and affection or a moral obligation, such as property sold for "love and affection."

Consideration of support. It is not uncommon for elderly parents to transfer property to their children "in consideration of care and support." In most states, such transfers are voidable if the care and support are not forthcoming.

consideration of support See *consideration*.

consignment The practice of accepting possession of goods for another with the intention of selling the goods and remitting payment to the owner, less any agreed-upon fees. Ownership of the goods remains at all times in the consignor, not in the shopkeeper (consignee). Landlords may not obtain liens in the goods, and lenders may not gain security interests under blanket liens, if they have been put on notice that the party engages in the sale of consigned goods.

consolidated metropolitan statistical area (CMSA) See *metropolitan area*.

consolidation loan A new loan that pays off two or more existing loans or indebtednesses, usually resulting in lower payments. Home equity lines of credit are often marketed as consolidation loans, urging consumers to pay off high-interest-rate credit cards and automotive debt for lower-interest-rate, tax-deductible, mortgage debt. While the practice does reduce monthly payments significantly, it replaces relatively short term debt with long-term debt and results in higher total interest payments over time.

constant The annual payment required to pay the principal and interest due on a $1 loan for a specified repayment term at a specified interest rate. Before the widespread availability of computers and extremely affordable financial calculators, it was common to use mortgage constant tables to calculate monthly payments. One would refer to the table for the proper loan term, such as 30 years, and then within that table find the loan constant for the anticipated interest rate. See the following example. The constant is the monthly payment on $1. To find out your own monthly payment, you multiply the constant by the number of dollars in your loan, and the answer is what your monthly payments would be.

Example:

Monthly Loan Constants for a 30-Year Mortgage Loan

Interest Rate (%)	Constant
5.00	0.00537
5.25	0.00552
5.50	0.00568
5.75	0.00584
6.00	0.00600
6.25	0.00616
6.50	0.00632
6.75	0.00649
7.00	0.00665
7.25	0.00682
7.50	0.00699
7.75	0.00716
8.00	0.00734
8.25	0.00751
8.50	0.00769
8.75	0.00787
9.00	0.00805
9.25%	0.00823
9.50	0.00841
9.75	0.0085

If the loan is $145,000 for 30 years at 6.75 percent interest, then

$$0.00649 \times 145{,}000 = \$941.05$$

constructed wetlands A system of artificially created marshy-type areas of vegetation with frequent flooding, designed to treat wastewater through natural biological processes. The Environmental Protection Agency is a strong proponent of this method of cleaning water and has many additional resources on its Web site at www.epa.gov; search on "constructed wetlands."

construction allowance As a leasing incentive, an amount budgeted for a tenant to spend on improvements to the space leased. When one is engaged in negotiations, care should be taken to define the tenant's obligations and the landlord's obligations with reference to the construction allowance. Also called tenant improvements allowance or TI for short.

> **Example:** *If the lease gives the tenant responsibility for all improvements "below ceiling," then the considerable cost of adding or replacing ceiling tiles and light fixtures must be borne by the landlord and will not be deducted from the construction allowance. One should also negotiate the disposition of any unused construction allowance dollars and provide for their use as a credit against future rent or for them to be retained by the landlord in the account of the tenant and used at some point in the future for rehab expenses such as replacing worn carpet or repainting internal corridors.*

construction contract A contract for construction services. A good one should contain the following information:

- The names of the parties
- The contractor's registration number
- A general description of the work to be performed
- A statement of the quality, such as "standard practices of the trades"
- A set of blueprints and engineering plans
- A set of specifications
- A description of responsibilities for oversight and management
- A timetable
- A fixed price for the work or a formula such as time and materials
- Definitions of terms, such as "time to exclude/include commuting time"
- The process for pricing and approving change orders
- Payment schedules
- The process to be used for dispute resolution
- Remedies in the event of default
- The terms of any warranties

construction loan A loan originated for the purposes of providing payment for construction work or subdivision development. See also *building loan agreement*.

construction to permanent loan A construction loan with provision for automatic conversion to a fully amortizing permanent loan upon completion of construction.

constructive eviction The circumstance arising when, through no fault of the tenant, the premises are rendered unusable for the purposes for which they were leased, resulting in the de facto equivalent of an eviction. The concept is available as a defense for consumer tenants breaking their leases and vacating the premises as a result of claimed constructive eviction. It is not generally available to commercial tenants.

constructive fraud A breach of some duty that results in a tendency to deceive others, with no requirement of a showing of intention to deceive or moral wrongdoing. A broker may be charged with constructive fraud if that person had a duty to disclose a known dangerous defect and failed to do so.

constructive notice Notice that is deemed to have been received by a person, whether or not the person actually received it.

- All citizens are presumed to have constructive notice of the law.
- All persons have constructive notice of the contents of documents recorded in the public real estate records.
- The owner of property has constructive notice of any persons in actual possession of the property and claiming adversely to the owner.

constructive possession Legally considered to be in possession of property even though not physically occupying it or using it in any manner. If one has a house on 40 acres of land, but rarely ventures outside the house and yard, one is in actual possession of the house and yard and in constructive possession of the remainder of the 40 acres.

constructive receipt An IRS concept that the unrestricted right to receive money is the same as actually receiving it for purposes of calculating income. This has nothing to do with accrual methods of accounting versus cash methods of accounting, but, rather, with timing of depositing checks and similar concepts.

Consumer Credit Protection Act See *Truth-in-Lending Act*.

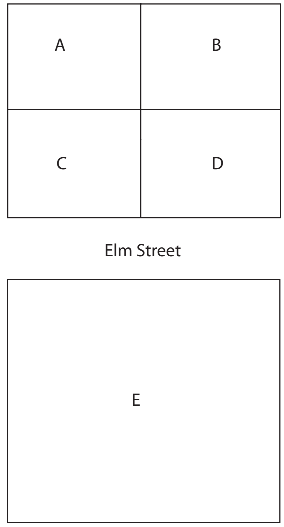
consumer mortgage Usually a home mortgage loan, but sometimes also refers to mortgages on rental houses.

consumer price index (CPI) A Bureau of Labor Statistics' (www.bls.gov/cpi/) inflation calculator; it is the most widely known index for measuring economic performance and inflation in the United States. The CPI measures and compares the total cost of a statistically determined "typical market basket" of goods and services consumed by U.S. households against the cost for the same goods and services consumed in the base period 1982–1984. The contents of the "market basket" are determined by the Consumer Expenditure Survey of about 10,000 families and their spending habits over a period of time.

contamination A condition of impurity resulting from mixture with a foreign substance.

contiguous Next to, actually touching, at something greater than a point. The identification of contiguous parcels is important in the following circumstances:

- In adverse possession, a party in actual possession of property that has a defective deed is considered in constructive possession of the remainder of the parcel, but not of contiguous parcels, even if described in the same deed.
- Bankrupt debtors may claim homestead rights in contiguous parcels of land and are not limited to the single parcel on which their home sits, assuming other legal requirements are met.
- Under the Uniform Land Security Interest Act (model legislation not necessarily passed by all states) a mortgage lender's after acquired property clause is unenforceable except as to contiguous property.



Parcel C is contiguous to parcels A and D, but only adjacent to parcels B and E. But, in some jurisdictions, if the corners of the properties touch, this is sufficient to make the properties "contiguous."

contingency clause A clause that allows cancellation of a contract without penalty if a certain described thing happens (e.g., an inspection report reveals necessary repairs estimated to cost in excess of $1,000) or fails to happen (e.g., failure to obtain satisfactory financing). A contingency clause contains a condition for contract performance.

contingent liability A liability that is not currently a liability but may become one upon the happening of some future event. If a father guarantees the student housing lease of his son, then the son is liable for the rent but the father may become liable if the son defaults. Other common contingent liabilities are guarantees of the debts of others, potential adverse judgments in litigation, and currently contested tax liabilities or audits. Lenders sometimes request a list of all contingent liabilities when evaluating a borrower's financial strength.

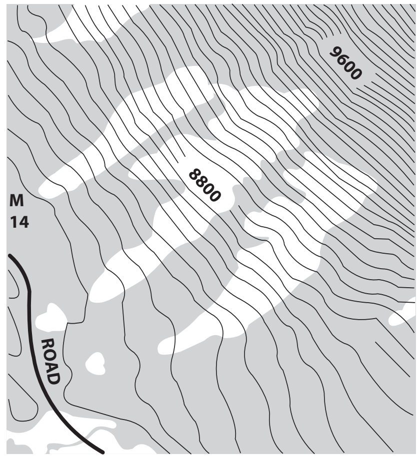
contingent offer See *conditional offer*.

continuing care retirement community See *life-care facility*.

continuous occupancy clause A clause frequently contained in the lease of a shopping center anchor tenant requiring it to remain open and in business for the entire term of its lease. The anchor is important not just because of its own rent payments, but also because it attracts customers who will shop at the other retail establishments in the center. If the anchor goes dark by moving out, all the remaining tenants will suffer, causing a possible domino effect of defaults.

continuous operations clause Similar to a continuous occupancy clause, but with better drafting. The continuous operations clause in the lease of a shopping center anchor tenant requires the tenant to remain open at a contractually defined level of operations sufficient to generate the traffic flow necessary to attract ample customers for the other shopping center tenants.

contour map A map that displays the hills and dales of a site as determined by a topographical survey. The contours of the land are represented by curved lines along which the height above sea level is relatively constant. The map will contain a linear scale indicating the dimensions of the site, and a contour scale indicating the elevation difference between contour lines, such as 5 feet. Lines that are widely spaced indicate a slow change in elevation; lines that are closely spaced indicate a rapid change in elevation.



contract A legally enforceable agreement. Its requirements are

- Competent parties
- Subject matter
- Legal consideration
- Mutuality of agreement (also called "meeting of the minds")
- Mutuality of obligation

As a general rule, oral contracts are enforceable unless they relate to real estate or are incapable of performance within one year, guarantee the debts of another, or are evidenced by some writing signed by the person sought to be charged ("This is to confirm our agreement…") There are other exceptions, but they are not relevant here. It is often difficult to enforce oral contracts because the parties usually have differing recollections of the exact terms of the agreement.

contract for deed See *bond for title*.

contract for purchase or sale A contract for the sale of real property. There is no one form for this purpose, although local boards of REALTORS® typically draft model contracts for customization and use by their members.

contractor One who supplies labor and materials to provide services in connection with the construction of an improvement on real estate. General contractors must typically be licensed by the state. An exception is made for property owners who act as their own general contractors or for general contractors of projects below a certain dollar limit.

contractor grade Usually an inexpensive quality of building materials; it is generally equated with the cheapest components possible.

contract price A tax term used in the calculation of gain realized on an installment sale. It is the selling price, minus any mortgage debt assumed by the buyer, plus the excess of any such liens collected in addition to the seller's equity in the property.

contract rate The face rate of the interest on a promissory note; typically the interest rate quoted, as opposed to the federally mandated calculation of annual percentage rate (APR) which treats certain prepaid loan costs as additional interest.

contract rent The rent stipulated in a lease. Contrast with *economic rent*.

contribution (1) An appraisal principle that says the value of an improvement is the amount it adds to the value of the property as a whole, not the value of the improvement standing alone in a void. A backyard workshop in a prestigious neighborhood might not add any value at all and could be considered an eyesore detracting from value, but might be worth $10,000 in a different neighborhood. (2) A legal principle holding that if a judgment is collected against one who was held guilty of negligence, assault, defamation, fraud, or some other tort, then that person may obtain a contribution from others against whom the same judgment was rendered, for their proportionate share of the judgment. Likewise, persons jointly liable for a debt, such as partners or cotenants, are responsible to pay their share to the other if one pays the entire amount.

contributory negligence A legal theory of negligence followed in some states (often called "contrib." for short). Under this theory, if someone was guilty of negligence that caused injury to another person, but the injured person was also negligent in any manner at all that contributed to his or her injuries, then there will be no recovery.

> **Example:** *If a contractor built a deck with supports in the soil instead of in concrete, the contractor would be guilty of negligence. If the homeowner routinely left a hose dripping at the base of one of the supports, leaching out the soil and rotting the wood, the homeowner would also be guilty of negligence. If the deck collapsed, then in a contributory negligence state the homeowner would not be allowed to recover any damages at all from the contractor. In a comparative negligence state, the homeowner's recovery would be reduced, but not eliminated.*

controllable expenses Real estate expenses one may manage and keep as low as practical under the circumstances. For an office building, controllable expenses would be things like janitorial services, office personnel, and, to a limited extent, electricity. The most common noncontrollable expense is real estate taxes. Most contracts or leases will define what they mean by controllable expenses, without regard to what the common understanding of the phrase might be. The phrase is important because many commercial leases require tenants to pay their pro-rata share of increases in building expenses each year. Wise tenants will negotiate an upper limit on the contributions; wise landlords will insist that the "cap" apply only to controllable expenses.

controlled business arrangement (CBA) A business arrangement recognized under the Real Estate Settlement and Procedures Act (RESPA) allowing a real estate brokerage office to provide financing, title insurance, and hazard insurance through the vehicle of subsidiary companies that operate within the brokerage office. Restrictions include the requirement that written disclosure of the affiliation be made to consumers, an estimated charge for the services is provided, consumers are free to obtain the services elsewhere, and referral fees are not charged among the various subsidiary companies.

control premium An amount paid to gain enough ownership interest to control a corporation or other entity. This would typically be an amount in excess of the simple fair market value of the shares sought to be purchased; used in business valuation calculations.

convenience center An open shopping center with fewer than half a dozen stores offering day-to-day necessities, such as basic groceries, dry cleaners, liquor stores, and video rental stores.

convenience store (C-store) A retail store that sells daily purchase items such as milk and beverages and impulse purchase items such as snacks and small gifts, usually in conjunction with gasoline sales. Convenience stores are attractive investments because the IRS allows rapid depreciation over a 15-year time period rather than the normal 39-year period required of typical commercial real estate.

conventional home Also called a stick-built home; a home built on-site, as opposed to a manufactured home (built elsewhere) or a modular home (components built elsewhere and assembled on-site).

conventional loans A mortgage loan without government participation in the form of insurance (such as the FHA) or guarantee (such as the VA).

conversion (1) The process of changing a property into condominium ownership. (2) Wrongfully taking property of another, or denying that person access to his or her property. If a self-storage facility overlocks a tenant unit in the mistaken belief the rent is past due, when in reality the rent was credited to the wrong person's account, then the facility is guilty of conversion.

conversion clause (1) A clause in a mortgage loan that allows the borrower to convert from an adjustable-rate mortgage to a fixed-rate mortgage, or that allows the borrower to convert from interest-only construction financing to a lower interest rate and usually fully amortizing permanent financing. (2) A clause sometimes seen in leases and real estate sales contracts providing that any personal property left on the premises after lease expiration or after real estate closing may be discarded or retained, as the real estate owner desires, and will not constitute a conversion. (In other words, the owner has no responsibility to keep the property in a safe place and/or attempt to return it to the former occupant.)

convertible ARM An adjustable-rate mortgage loan that the borrower may convert to a fixed-interest rate during a predetermined time period, at an interest rate calculated according to a formula set out in the note.

convey To transfer title to real estate to another.

cooling off period A time period within which a person may change his or her mind about a contractual agreement and cancel it without penalty. The right must be granted within the contract itself or by virtue of consumer protection statutes because it does not exist at common law.

co-op (1) Short for cooperative apartment, being a method of owning real estate in which a corporation owns a building and related facilities and persons who buy stock in the building are entitled to rent a particular unit, called a proprietary lease, at rates significantly below market rents. (2) An arrangement between two real estate agents for the sale of a property and splitting of the commission, usually as a result of one agent having the listing with the owner and another agent bringing the buyer to the closing table.

cooperating broker A broker who agrees to split a real estate commission with another broker in return for services rendered in connection with a particular piece of real property.

cooperative apartment See *co-op*.

core-based statistical area (CBSA) A concept developed by the federal Office of Management and Budget in order to standardize geographic and population descriptions so that data from one federal agency may be reliably related to data from another federal agency without having to recheck definitions used by each agency. In the Year 2000 census definitions by the United States Census Bureau, a core-based statistical area is a functional region based around an urban center of at least 10,000 persons. These definitions replace the Year 1990 census definitions of metropolitan area, metropolitan statistical area, and consolidated metropolitan statistical area, although the older terms are still used in common parlance. CBSAs are further grouped as follows:

- Metropolitan statistical area. Contains at least one urbanized area of 50,000 people or more.
- Micropolitan statistical area. Contains at least one urbanized area and a population of 10,000 to 50,000 people.
- Metropolitan divisions. Divisions in metropolitan statistical areas with a single core of 2.5 million people or more.
- New England city and town areas (NECTAs). Geographic areas defined by cities and towns in New England, but still segregated according to the 50,000 people per size cutoff.

core factor In an office building, the percentage of common area space such as lobbies, restrooms, and corridors as compared to the total net rentable square footage in the building. See *loss factor*.

CORENET Global An association of corporate real estate executives and related professionals, organized in 2002 by the merger of the International Development Research Council (IDRC) and the National Association of Corporate Real Estate Executives (NACORE). The Web site for CORENET Global is at www.corenetglobal.org.

core space In an office building, the common area space such as lobbies, restrooms, and corridors.

corner influence The effect on the value of real estate by its proximity to the intersection of two streets.

corner of Main and Main The most important intersection in a community or in a downtown office area. Some drug store chains have a simple site-selection preference for the "corner of Main and Main," no matter what the cost.

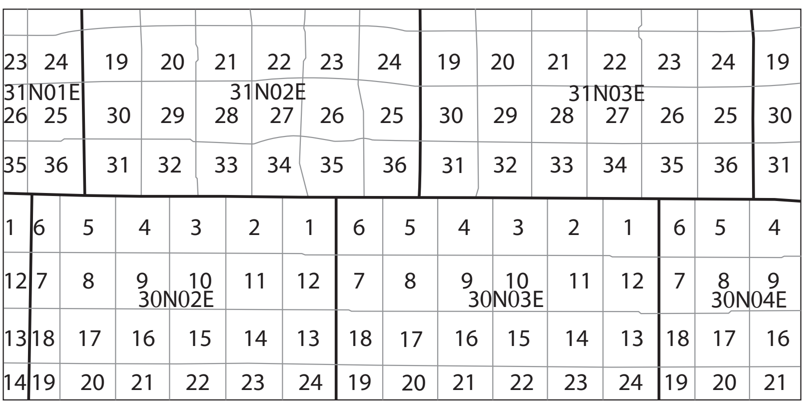
corporation A legal entity created by filing documents with the local secretary of state, commissioner of corporations, or similar official. It may have as few as one shareholder, must begin life with some minimal amount of assets gained as a result of the shareholder(s) paying for shares of stock, may be stipulated as having a limited life span or perpetual existence until formally dissolved, and may be designated as having the powers to do only limited types of things or anything allowed by law. The entity thus created will enjoy all the rights and responsibilities of natural persons, including owning and renting real estate, and suing or being sued in the courts. The IRS allows corporations to be segregated into three main types for tax accounting purposes:

1. **S-corporation.** A small corporation that is allowed to file information returns only. It pays no taxes on its income but, instead, sees all income taxed to the shareholders according to their pro rata share of the corporation.
2. **C-corporation.** Any corporation that does not meet the limitations for an S-corporation, or one that otherwise qualifies for S-corporation status but elects to be treated as a C-corporation. The corporation files its own tax returns, pays taxes on income, and then distributes dividends to shareholders who pay taxes on the dividends.
3. **501(c)(3) corporation.** A not-for-profit corporation authorized by Section 501(c)(3) of the Internal Revenue Code, which files an information tax return but pays no taxes.

corporeal Tangible real or personal property; things you can touch. Contrast with incorporeal property such as easements (a right to use, but not a right to, property) and goodwill.

correction deed A deed executed to correct some defect in the original, such as the misspelling of a name or a mistake in a property description. Correction deeds are usually exempt from transfer taxes imposed by the recording authority.

correction lines Provisions in the public land survey system made to correct for the curvature of the earth; one cannot have perfect rectangles over a curved surface. Every fourth township line (24 miles apart) is used as a correction line on which the spaces between the east and west range lines are corrected to a full and proper 6 miles. The effect is that the grid lines do not match up until they meet at the principal meridian.



correlation A former appraisal term, replaced by reconciliation.

correlative water right A theory of riparian rights—water rights—that holds an owner who has rights in a common source of water is entitled to take only a reasonable amount of water for the beneficial use of the land. Contrast with appropriative rights, in which the owner has the exclusive right to take all the water for the beneficial use of the land.

cosigner A person who signs a promissory note in such a capacity that he or she has equal and primary liability with another. Contrast with a guarantor, who is liable only if the original obligor defaults. A cosigner must list the promissory note as a liability on financial statements; a guarantor has only contingent liability which may never ripen into full liability.

cost allocation depreciation A tax method of depreciating property by separating a functional unit—such as an office complex—into allowable components that may be depreciated over a shorter time period than otherwise permitted for the whole. For example, nonresidential real property improvements must be depreciated over 39 years. One may allocate the cost of some components, such as fencing, lighting, security systems, and carpet into categories that can be depreciated over 5 or 7 years, providing larger tax deductions.

cost approach An appraisal method that estimates the cost to reproduce or replace an improvement and then subtracts an amount for depreciation to reach the current condition of the property. Of the three approaches—comparison to comparable properties, capitalization of income, and cost—cost is the one deemed least reliable overall, but most necessary in the case of unusual properties with no realistic probability of a tenant.

CoStar A commercial provider of information about commercial real estate in most major markets across the United States and the United Kingdom. The information provided includes the ability to take a virtual drive down a designated street; to see street-level views of all the properties; and to click through to obtain information regarding ownership, management, vacancy rates, tenant information, lease expirations, and asking rents. Other information includes a property listing service, data regarding sales prices of properties, and advertising services for real estate firms. The CoStar Web site is at www.costar.com.

cost basis The original cost of a property. After increases for capital improvements made over the years, and decreases for depreciation deductions or involuntary conversions such as condemnation, the number becomes one's adjusted basis.

cost-benefit analysis A decision-making tool that evaluates all the hard-dollar and economic consequence costs associated with pursuing a course of conduct against all the hard-dollar and economic consequence benefits reasonably to be expected from that decision, and comparing the two to see if they make economic sense.

> **Example:** *Riverdale Apartments is experiencing increased competition because of the abundance of new apartment projects being built nearby. In order to compete more effectively, it is considering adding a sophisticated security system with Web cameras allowing residents to monitor gate access; areas around the buildings; and common areas such as the laundry room, swimming pool, and playground. The hard costs of $270,000 can be partially defrayed by*

charging rental rates $15 per month higher than other properties. Spread across 200 apartments, this results in an additional income of $36,000 per year. In addition, the system is anticipated to result in the ability to retain occupancies at 95 percent rather than an expected short-term drop to 75 percent until the new apartment buildings fill up and begin charging market rents in about 2 years. Calculations may attach a value of $36,000 per year to this consideration. Finally, the security system will result in significant insurance premium reductions amounting to $20,000 per year. The total short-term economic benefit is $92,000 per year for 2 years and $56,000 per year each year afterward (without adjusting for inflation or the cost of money). As a result, the initial $270,000 investment can be recouped in about 3½ years and will show a profit afterward. After completing this cost-benefit approach, management will probably decide to spend the money for the improvements.

cost of funds index (COFI) A yield index based on the cost of funds to savings & loan institutions in the San Francisco Federal Home Loan Bank district. It is one of the indexes commonly used to set the rate of adjustable-rate mortgages.

cost-of-living adjustment (COLA) A change in payments, such as rent in subsidized housing, based on a change in the index that measures inflation.

cost-of-living index An indicator of the current price level for goods and services as compared to a base year. The base year is always set at a value of 1.0 or 100. As the cost of living increases (inflation), the number will increase, so that a cost of living index of 150 means things cost 50 percent more than they did in the base year. As the cost of living decreases (recession or depression) the number will decrease, so that a cost of living index of 93 means things cost only 93 percent of what they cost in the base year. The consumer price index is one such cost of living index.

cost-plus-percentage contract A compensation method for a construction project, in which the contractor is paid a specified percentage over and above construction costs. This percentage may be pure profit to the contractor, or it may be the contractor's gross compensation from which must be paid general overhead expenses such as clerical help, phone lines, and general business insurance. It is important to determine the difference, because if the contractor expects the percentage to be pure profit, then normal business operating expenses will have to be accounted for somewhere in the construction contract as expenses.

cost recovery A tax concept commonly called depreciation, but technically different in ways that don't matter to most taxpayers. The explanation is that depreciation is a calculation determined by starting with the acquisition cost of a property and then subtracting the anticipated salvage value when the property's useful life is over. That number is then divided by the number of years one can reasonably assume the property will have a useful life. The resulting figure is the annual depreciation for the property. Because of constant arguments, audits, and litigation over the correct salvage value and the correct useful life for various properties, the IRS replaced the whole depreciation system with the cost recovery system that assigns a useful life to various classes of property, assumes the property will be worthless at the end, and then allows deductions over the course of the useful life.

cost to cure The amount of money necessary to remedy something that is depressing the value of real property. If the cost to cure a parking lot filled with potholes is $12,000, but the current parking lot condition depresses the value of the property by $20,000, then the defect is said to be curable.

cotenancy A form of property ownership in which two or more persons or entities own undivided interests. The interests do not always have to be in equal shares.

Council of Real Estate Brokerage Managers An affiliate of the National Association of REALTORS®; it confers the Certified Real Estate Brokerage Manager (CRB) designation. The Web site of the Council is www.crb.com.

Council of Residential Specialists An affiliate of the National Association of REALTORS®; it confers the designation Certified Residential Specialist (CRS). The Web site of the Council is www.crs.com.

counseling A relatively new career within the real estate industry that involves providing independent and unbiased advice on a variety of real estate–related issues. Membership in the Counselors of Real Estate (www.cre.org) is by invitation only. Another trade organization is the National Association of Counselors (http://nac.lincoln-grad.org/).

counselor One who provides counseling services.

Counselors of Real Estate (CRE) See *counseling*.

counteroffer An offer that differs from the previous offer in some significant detail. A counteroffer rejects the prior offer by operation of law, and instead makes a new offer that must either be accepted or rejected by the other party.

Example: *A seller offers to sell her home "as is" for $250,000.*

- A buyer offers to buy the home for $240,000, but the seller must replace the roof and recarpet the house (counteroffer)
- The seller replies that she will sell for $235,000 "as is" (another counteroffer).
- The buyer replies that he will pay $210,000 "as is" (another counteroffer).
- The seller sees things going downhill and says, "Wait, wait, I accept your first counteroffer of $240,000 and I will repair the roof and carpet." However, the seller cannot do this, because that offer no longer exists and cannot be accepted.

county A political subdivision within a state. It is usually the largest government body within the state. In Louisiana, the equivalent is called a parish.

coupon book Formerly, a booklet given to investors with coupons that were clipped out and mailed in to receive that period's income. This was the source of the expression "coupon clipper," meaning a person of leisure with investment income. Today, a coupon book is the booklet given to mortgage borrowers, containing coupons with account and payment information, to be mailed in with monthly mortgage payments.

court An organ of government belonging to the judicial department and charged with resolving disputes among parties. Courts generally have jurisdictional requirements providing that only certain disputes among described parties for certain amounts of money may be heard. If you file your grievance in the wrong court, you may be prejudiced when the case is dismissed for lack of jurisdiction and the time period during which to file in the proper court has expired.

covenant An agreement. For example, one can make a "covenant not to compete" a provision of a business sale, or one can write a restrictive covenant regarding the use of real property into the real estate records, which binds all owners whether it is contained in their specific deed or not.

covenants, the usual The use of this expression in a real estate contract refers to the seller's obligation regarding the type of deed the seller will execute. The three usual choices are a general warranty deed, a special warranty deed, or a quitclaim deed. The general warranty deed gives assurances and promises regarding the quality of the title being transferred; a special warranty deed merely promises that the seller has not done anything to injure the title, but makes no promises about other parties and their possible claims; while a quitclaim deed merely transfers any interest the seller might have, not that the seller is saying he or she owned anything at all. As a general rule, courts have construed contract language requiring execution of a deed "with the usual covenants" to mean a general warranty deed with the covenants of seisin, right to convey, against encumbrances, quiet enjoyment, warranty, and further assurances.

CPI See *consumer price index*.

CPM See *Certified Property Manager*.

CRA See *credit reporting agency* and *Community Reinvestment Act*.

cradle-to-the-grave management A phrase used to describe the Resource Conservation and Recovery Act, which is a federal law establishing a system for managing hazardous wastes in an environmentally sound manner from the point of origin to the point of final disposal.

cram down A bankruptcy tool used by debtors to force creditors to agree to a plan of reorganization in Chapter 11. If the requisite minimum number of votes have been obtained to approve a plan of reorganization, and if the plan provides better protections or payments to the nonconsenting creditors than they would receive in a liquidation, then the court may "cram down" the plan and all will be bound by its terms.

CRE See *Counselor of Real Estate*.

creative financing Any financing arrangement other than the traditional one of obtaining a loan from a commercial lending institution.

credit (1) In finance, the availability of money. (2) In accounting, a liability or equity entered on the right side of the page in double-entry accounting. The concept is confusing to most consumers because an accounting "credit" does not mean more "stuff" such as property or money; it merely indicates the side of the page on which the entry is posted. The other entry is called a debit.

credit bid The amount a lender can bid at a foreclosure sale under one of its mortgages, representing the total of all amounts due under the promissory note.

credit bureau See *credit reporting agency*.

credit enhancement A method of reducing the risk of extending credit to a borrower. It can include requiring collateral, a stand-by letter of credit, a comaker, a guarantor, or any other means.

credit history An individual's history and experience regarding repayment of loans and use of revolving credit such as credit cards.

credit life insurance Insurance that pays to a lender the full principal balance of a loan in the event of the death of the borrower. It is illegal for a lender to require credit life insurance (or credit disability insurance) as a condition of making a loan.

credit limit The maximum loan amount a person may receive on a particular instrument or from a particular lender. A revolving line of credit might have a credit limit of $50,000. Banks have limits on the amount of credit they can extend to single borrowers, based on the size of the bank, and limits on the credit they can extend to officers and directors.

creditor One who is owed a debt.

credit rating service See *credit reporting agency*.

credit report A history of all information on file at a credit reporting agency about a particular individual or business. By law, consumers are entitled to receive one free credit report per year from each of the three major credit reporting agencies—Experian, Equifax, and TransUnion, but may request and pay for as many as they choose. Requesting one's own credit report does not decrease the score. You may obtain a copy of your report by going to the official Web site at www.annualcreditreport.com or calling 1–877–322–8228. (Beware: The Web site www.freecreditreport.com is not the official, federally mandated Web site.)

credit reporting agency (CRA) An organization that maintains credit history information and sells reports and scores to authorized credit grantors. Regulated by the Federal Trade Commission under the requirements of the Fair Credit Reporting Act.

credit scoring The process of rating potential borrowers based on their overall credit history, current debts, and frequency of application for credit. The most commonly used score, by far, is the FICO score.

credit tenant A national or large regional tenant with excellent credit. Although local tenants may also have excellent credit, oftentimes better than their national counterparts, only the larger companies are called credit tenants. A lender will offer more attractive financing terms for a development with a certain amount of space preleased or currently leased to credit tenants.

credit union A nonprofit organization in which qualified persons may make deposits and obtain loans. Formerly, membership was strictly defined so as to limit it to persons in a particular industry or trade organization, but those rules are now largely obsolete. Bankers believe that credit unions enjoy an unfair advantage in the marketplace by virtue of paying no income taxes as a result of their nonprofit status. The lack of any income tax expenses allows the credit unions to offer somewhat higher rates on deposits and somewhat lower rates on loans.

CREW network See *Commercial Real Estate Women*.

crib Slang for one's dwelling place.

cross-collateralization The process of tying two or more mortgages together so that the security of one note stands as security for the other notes. A step often taken in a debt workout after default so that the creditor may enhance the amount of collateral available for a debt and also increase the hostage value of property, thereby discouraging any plans the debtor might have to simply turn in the keys and abandon mortgaged property to the creditor.

cross-defaulting clause A provision in many mortgages that a default in any mortgage on the property, or any loan by the same lender to the same borrower, will constitute a default in the one containing the clause, even if all note payments are current on that particular mortgage. Used as a method for early triggering of remedies before things are allowed to deteriorate to a point that could seriously impair the value of the collateral.

> **Example:** *A borrower may default on a second mortgage but not suffer foreclosure because the second mortgage holder believes the property has insufficient equity to make it worthwhile. Technically, this does not affect the first mortgage lender, but is a good indication of worsening financial conditions and possible cessation of routine property maintenance by the borrower, possible insurance cancellations, potential lawsuits from other creditors which might force a bankruptcy, and other matters generally unpleasant to contemplate by the first mortgage holder. It may be preferable to declare a default immediately and proceed to foreclosure rather than wait until the borrower misses payments on the first mortgage.*

CRS See *Certified Residential Specialist*.

CRV See *certificate of reasonable value*.

C2P See *construction to permanent loan*.

CTL Shorthand for credit tenant lease. See *credit tenant.*

cubic yard A measurement used to measure concrete, gravel, or earth. It measures 3 ft × 3 ft × 3 ft, which is equivalent to 27 cubic feet. Usually shortened to simply "yard," as in "It will take 12 yards of dirt to fill that hole."

culvert A waterway for rainwater or other runoff; may be a ditch or a pipe. If ditches along the side of a road channel runoff, then property owners must install culverts under driveways in order to prevent the formation of dams. One must usually obtain highway or road department permission to install a culvert because the location will generally be in a road right-of-way.

curable depreciation Depreciation that can be cured at a cost less than the value that will be added.

curb appeal The subjective evaluation of the aesthetic appeal of a house or other building, as viewed from the street.

cure rights In bankruptcy, the right to fix a default so that a creditor cannot pursue its remedies. For example, a debtor may file for bankruptcy moments before foreclosure, stop the foreclosure, and then propose a plan to cure the default and past due sums. Usually the plan involves small monthly payments over the course of several years. Of course, it is not enough to cure the default, the debtor must also stay current on future obligations, but bankruptcy will sometimes allow for a renegotiation of those obligations.

current use See *highest and best use*.

curtail schedule See *amortization schedule*.

curtesy The right of a husband to some interest in his deceased wife's real estate, even if the wife died without a will or left all property to another in her will. The same rights granted to a widow in her deceased husband's property are called dower. As a result of these rights, mortgage lenders may require a spouse to sign a mortgage instrument giving security in the real estate, even though the spouse has not signed the promissory note and so has no personal liability to repay the debt. Many states have abolished the ancient rights of dower and curtesy.

curtilage The enclosed space of ground and buildings immediately surrounding a dwelling, or a conceptual amount of space reasonably attached to the use of a dwelling. This is an important concept in law enforcement in determining whether (a) an area is within the curtilage and thus searchable under a search warrant for the dwelling, (b) an officer's presence in an area for surveillance purposes is within the curtilage and thus an unlawful entry, and (c) despite the determination of (a) and (b), there is no expectation of privacy in garbage left within the curtilage for pickup, so it may be searched without a warrant.

cut and fill The process of contouring land to more easily develop it, accomplished after clearing and grubbing.

cyberpark A large area of land where computer and technology companies are concentrated, or that has been constructed with a high-tech communications infrastructure such as loop redundancy, fiber optics, and perhaps even belowground network bunkers of reinforced concrete.

D

damages Compensation for an injury for which the law provides a remedy. Following are highlights of some of the law of damages as it relates to real property:

- The measure of damages to property is the difference in the value of the thing before the injury and after the injury. The cost to make repairs is usually not a valid measure of damages.
- Parties may not contractually agree to a penalty for default, such as late completion of a construction project. Penalties are illegal. Parties may, however, agree that the damages for default will be difficult to measure exactly, so they will agree to liquidated damages in a certain agreed-upon amount. This is the reasoning behind contracts that allow retention of the earnest money if the buyer defaults.
- In breach of contract cases, injured parties are required to take such actions as are reasonable to minimize their damages and will be denied any damages at all if they do not take such mitigation steps. If a tenant breaches a lease, the landlord must try to release the premises to another, and the value of any damages will be diminished by the value of the new lease.
- Consequential damages, which are damages not as a direct result of the wrong, but flowing from some of the consequences of the wrong, are recoverable only if the wrongdoer had some reason to know of the consequences. A person who allows something unsafe to remain on the premises (such as a wet floor) may be responsible for the injury to a guest who slips and falls. However, the person may not be liable for the consequential damages when the guest becomes addicted to pain medication.
- Punitive damages are intended to punish the wrongdoer and deter future similar conduct. Because of the preponderance of multimillion-dollar punitive damage jury verdicts in recent years, the United States Supreme Court has recently held that excessive punitive damages are a violation of the "cruel and unusual punishment" clause of the Constitution, and so may be reviewed in the federal court system and set aside even though the original lawsuit was brought in a state court system.
- Treble damages are allowed under many federal statutes rather than allowing the jury to calculate punitive damages.
- Damages received for personal bodily injury are not income and not taxable; other types of damages may be taxable depending on what they represent.
- Damages are recoverable for emotional distress. The addition of a claim for emotional distress is often enough to trigger an insurance company defense of a lawsuit. Although there may not be insurance coverage for an award, it will pay for the lawyers.

Davis-Bacon Act A federal law requiring certain minimum levels of wages for all workers involved in construction on federal projects or federally funded projects. The purpose was to give local contractors an opportunity to participate in government contracts, even though out-of-town contractors might have access to cheaper labor and would therefore enjoy a competitive advantage in bidding. The other purpose was to prevent contractors from paying lower wages than currently prevailing in the local marketplace, thereby reducing wages for the entire area. The Act is looked upon as one favoring unions, although that was not the intent. In fact, the Act had an unsavory beginning, introduced by Representative Bacon in 1927 as a reaction to a contractor who hired poor black laborers from Alabama to build a veterans hospital in Bacon's district of Long Island. The Act does not require payment of union wages, merely payment of wages consistent with those prevailing in the community. Today, the Act is still alive and well, and garnered tremendous public support when President Bush attempted to temporarily suspend it for contractors working in hurricane-damaged parts of the country.

d/b/a (Also written as "dba.") Means "doing business as." Some states require dba registration with a central office, and others do not.

DBH Means "diameter breast-high"; the diameter of a tree at a point 4 1/2 feet above the ground.

Many homeowners associations prohibit cutting trees of a certain DBH on one's own land, unless the property owner receives prior approval.

When selling timber, purchasers generally need to know the average DBH for the trees. The information is also necessary to calculate tonnage of timber, which is the more modern way of pricing, rather than calculating board-feet.

DCR See *debt coverage ratio*.

DDA See *demand deposit account*.

dead load The weight of a building, not counting the occupants and furnishings.

dead man's statute A law of evidence employed in many states. One version says that a witness may not testify about oral statements made by a decedent (someone who has died) if the effect of the testimony would be to make the decedent's estate larger or smaller, even if the witness would not benefit one way or the other. Another version says witnesses cannot testify about statements made by a decedent if the witness would benefit from those alleged statements. (Be sure to clearly understand which is being used in a specific case.)

dealer In tax law, persons who buy and sell property for their own account, whether that property consists of silver spoons, trading cards, or real estate. Investors want to avoid dealer status because:

- Gains on sales are treated as ordinary income rather than the more favorably treated capital gains, no matter how long you hold a particular piece of property.
- Dealers have to pay self-employment taxes on their income.

- Dealers cannot take advantage of installment sales provisions that allow others to pay taxes over time, as they receive installment payments from the purchaser. Dealers must pay income taxes on the entire profit, even if they receive payments over many years.

dealer status See also *dealer*. Determined by the intent of the party. The courts have arrived at several areas they will examine in order to determine intent. The most significant are

1. Taxpayer's purpose for the acquisition and sale
2. Number and frequency of real estate sales
3. Duration of ownership
4. Time spent by taxpayer in promoting the sale
5. Use of outside brokers in making the sale
6. Extent of taxpayer improvements to the property

debenture An unsecured note or bond.

debit (1) On a closing statement for a real estate sale, an item that is charged to a party. (2) In accounting, an entry that appears on the left side of the page. It is the opposite of a credit. In accounting, a credit does not necessarily indicate more money and a debit does not necessarily indicate less money or an expense.

debt An obligation to pay another.

debt capital Money borrowed on a long-term basis and used to purchase an investment such as real property.

debt coverage ratio (DCR) The ratio of net operating income compared to annual debt service, which includes principal and interest payments. The ratio is used by lenders to evaluate loans on income-producing property. A ratio of 1.2 or better will usually support the extension of credit.

Example:

Annual revenues	=	*$100,000*
– Annual operating expenses	=	*50,000*
= Net operating income	=	*50,000*

Annual debt service on proposed loan = 11,000

$50,000 ÷ $11,000 = DCR of 4.54

debt/equity ratio The ratio of mortgage debt to the owner's equity in the property. Typical home mortgage lenders require a debt/equity ratio of 80 percent—meaning they will loan up to 80 percent of the value of the home. Higher ratios can be obtained by purchasing private mortgage insurance. Commercial lenders have varying requirements depending on particular market circumstances at the time.

debtor (1) One who owes a debt. (2) In bankruptcy, the person who requests protection under the bankruptcy laws.

debtor in possession (DIP) (To pronounce the abbreviation always say each letter; it is not pronounced as a word.) In bankruptcy, a Chapter 11 debtor who remains in possession of his or her property and continues to operate a business or sell the property. The DIP must still obtain court approval for nonroutine transactions but is able to conduct business, receive monies, and pay bills, including a reasonable salary for the debtor. Contrast with the situation in which a bankruptcy trustee is appointed; in this case the trustee is then in control of all assets of the debtor.

debt relief The forgiveness of a legal obligation, in whole or in part. In real estate, it occurs most frequently when a mortgage lender agrees to accept a deed to the property rather than go through a foreclosure, and further agrees to accept the property as full payment for the loan, even though it is not worth the full amount of the loan. In such a situation the borrower has received debt relief and must report that as income for tax purposes. There is a loophole: if the debtor was insolvent immediately before the debt relief, and insolvent immediately after the debt relief, then he or she need not declare income to the extent of the insolvency.

Example:

The debtor owes $125,000 on his home and 20,000 on credit cards. The debtor's only asset is his home, which is worth $110,000.

Netting assets and liabilities before the debt relief results in the debtor being insolvent by $35,000.

After giving the home to the bank and receiving forgiveness of the balance of the mortgage loan, the debtor now still has credit card debt of $20,000 and no assets at all. The debtor is insolvent by $20,000.

Because the debtor is still insolvent, and the debt relief did not cure his condition of insolvency, there is no taxable income.

See also Publication 17, "Your Federal Income Tax," Chapter 12, "Other Income," available at the IRS Web site, www.irs.gov.

debt service The amount necessary to make principal and interest payments on a loan. It does not include amounts collected each month as a reserve for insurance or real estate taxes and does not include payments for private mortgage insurance.

debt service constant See *mortgage constant*.

debt service ratio The ratio of debt payments to disposable income; used in evaluating one's eligibility for a mortgage loan. National averages, calculated quarterly for every year since 1980, are provided at the Web site of the Federal Reserve Board, www.federalreserve.gov/releases/housedebt/default.htm.

debt to equity ratio See *debt/equity ratio*.

decedent One who has died. The legal subject "decedent's estates" deals with all the law related to the collection, preservation, and disposition of property formerly belonging to a decedent.

declaration The legal document a condominium developer must file in order to create the vehicle for condominium ownership. All states have fairly similar laws setting out the requirements for what must be in the declaration. They are sometimes called uniform condominium acts or horizontal property acts.

declaration of condominium ownership See *declaration*.

declaration of homestead A document signed by a homeowner and filed with the tax assessor's office in order to take advantage of homestead exemptions reducing real estate taxes.

declaration of restrictions A document filed in the real estate records of the county where property is located, and incorporated by reference into the deeds of every property located within the described area, setting out the rules and regulations pertaining to those properties. It is commonly used to spell out restrictive covenants in neighborhoods, such as minimum building size, setback lines, prohibitions against home-based businesses, and restrictions against boats or motor homes parked in view of the street.

declaration of trust A written statement that one who holds the legal title to property does so in trust for another, being the beneficiary.

decree Technically, the judgment of a court of equity. Today, states have abolished the distinctions between courts of law, which followed fairly strict rules of law and awarded damages to injured parties, and courts of equity, which generally tried to do what was fair and just (equitable) and issued decrees to people ordering them to do something, or to stop doing something. Causes of action are grounded in law or equity, but the same court and same judge now hear everything.

decree of foreclosure and sale An announcement by a court establishing the amount of a mortgage debt and ordering the foreclosure of the property to pay the debt; employed in states that must follow judicial foreclosure in order for a lender to sell mortgaged property.

dedicated circuit An electric circuit that serves only one appliance (e.g., a dishwasher) or a series of electric heaters or smoke detectors. It is an important point of lease negotiations to agree upon the number and size, in amps, of dedicated circuits to be provided to a tenant. Most leases of large and modern office buildings contain restrictions on the electrical load a tenant can place upon the building.

dedication An owner's gift of land, or an interest in land such as a right-of-way, for the public's use, coupled with the public's acceptance of the gift by making use of it. A dedication may be express, as when the owner specifically states an intention of dedicating land for a park. Alternatively, a dedication may be implied because of the owner's conduct and the reasonable conclusions to be drawn from that conduct. When one sees news stories about protestors attempting to block development of a valuable vacant lot previously kept clean and mowed by neighbors and used by children as a park, one is seeing an attempt to have a court declare that the owner made an implied dedication for the public use.

deed A written document properly signed, acknowledged, and delivered, and bearing a description of specific property and words of conveyance for that property.

deed books Records containing copies of recorded deeds and other instruments affecting title to land located within the jurisdiction.

deed indented See *indenture deed*.

deed in lieu of foreclosure An instrument transferring title to real property to a mortgage lender without the necessity of going through the foreclosure process. Called the deed in lieu (pronounced "loo") for short, the procedure is attractive to lenders because of the speed, lack of any defenses, and removal of anxiety about last-minute borrower bankruptcy. It is attractive to borrowers because there is no foreclosure to appear on the credit records. There is some risk to the lender if there are intervening liens, because a deed in lieu transfers title to property subject to the effect of any junior liens. Usually a foreclosure destroys other liens, if they were recorded after the mortgage or deed of trust.

deed of reconveyance A method of extinguishing lender's rights in real property in a state that uses the deed of trust procedure rather than the mortgage procedure.

deed of trust A security instrument used to grant rights in real property to a lender. It is used in some states; other states use mortgages to accomplish the same goal. With a deed of trust, title to the property is transferred to a trustee, who holds it in trust for the borrower's benefit until such time as the loan has been paid in full. At that time, the trustee will transfer legal title back to the borrower by way of a deed of reconveyance. If there is a default and foreclosure, it is the trustee who conveys the property to another.

deed poll A deed signed only by the grantor. This is the typical type of deed, but one rarely hears it called a poll deed or deed poll. Contrast with a deed indented, also called an indenture deed, which contained promises, representations, or warranties by both the seller and purchaser and so required both signatures. The documents were distinguished because the deed poll had a "polled" or clean-cut edge, while the deed indented had an indented or jagged edge.

deed restriction A provision placed in a deed restricting or limiting the use of the property in some manner. It may include subdivision or similar restrictions common to many properties in the neighborhood, or it may be something personal to the grantor such as a requirement that the purchaser resell to the seller before offering to anyone else.

deed to secure debt A type of mortgage used in a few states; the title to the property is transferred to the lender until the debt is paid in full. Contrast with deed of trust which is employed in states called title theory states, and with true mortgages which are employed in states called lien theory states. The deed to secure debt is a hybrid of the two theories.

de facto In fact, in actuality, as things are really done. The phrase is used to express a state of affairs or condition that might not be technically legal, but which has the same effect as the legal condition. Here are two examples:

- When an apartment complex allowed the power to be disconnected for nonpayment and failed to secure a reconnection, it amounted to a de facto eviction of all the tenants (also called a constructive eviction).

- The IRS has ruled that a long-term lease of property with the right to purchase for $1 at the end of the term is not a true lease, but a de facto installment sale.

defamation of title Wrongfully causing some cloud—problem—to be placed on the title of another, such as a lender failing to satisfy a mortgage that has been paid in full.

default The failure to meet one's obligations in a timely manner. There are several important concepts relating to defaults in the real estate field:

- Leases and mortgages often differentiate between monetary defaults, such as failure to pay money when due, and nonmonetary defaults such as a failure to provide proof of insurance or copies of monthly financial statements. If so, there will be different notice provisions and grace periods for each.
- Unless a sale contract contains language that "time is of the essence," or one party has made the other aware that time is critical, then a court will ordinarily award a purchaser a reasonable amount of time to complete closing, even if it is past the contract date.
- Some states have statutes allowing collection of attorneys' fees when there has been a default in the contract. Other states require specific language in the contract allowing for collection of attorneys' fees.

default point The total revenues necessary from a project to pay all the bills with nothing left over—the point at which $1 more in revenues creates a profit and $1 less forces one to default on paying creditors unless additional capital is injected into the project. See *break-even point*.

defeasance The process of legal title being transferred back to a borrower once all payments and other requirements in a mortgage loan have been completed.

defeasance fee A prepayment penalty; in a commercial loan, money that must be paid to the lender when a mortgage is paid off earlier than the specified maturity date.

defeasible fee A real property title that can be revoked or undone upon the happening of a named event. (The whole area of real estate law, regarding things that might happen in the future to grant or take away title to property, is called future interests. The rules are exceptionally complex and not often encountered in the real world.)

defect in title A recorded instrument that would prevent a grantor from giving good or clear title to property.

defendant The party sued in an action at law. Contrast actions in equity, in which the party sued is called a respondent. Today, these distinctions are largely irrelevant, but they may be encountered when reading old legal decisions.

deferred charges An accounting and tax concept in which nontangible costs that are expected to provide value over a number of years are booked as assets and then reduced each year by a pro rata amount as they are charged to expenses.

Example:

Acme Inc. pays a broker $75,000 to negotiate a 10-year lease on very favorable terms.

Year 1, day 1: Acme writes a check for $75,000 and books an asset for $75,000.

Year 1, day 2: Acme enters an expense for $7,500 (one-tenth of the total amount) and reduces the asset by $7,500. The net result is that, at the end of year 1, Acme has $75,000 missing from its bank account, but this is balanced by an asset of $67,500 and an expense of $7,500.

Years 2 through 10: Continue the same process as year 1, day 2 until the deferred charge is finally $0 and the last $7,500 is expensed.

If you do not properly account for such deferred charges on your taxes, you risk an audit, disallowance of expenses, penalties, and interest.

deferred commission A real estate commission paid at a later date or over time. See *residual*.

deferred exchange The correct name for a real estate transaction which is often erroneously called a tax-free exchange. See *1031 exchange*.

deferred gain In a tax-deferred exchange, the amount of gain that escapes current taxation and is deferred until a later date, when the replacement property is sold. See *1031 exchange*.

deferred maintenance A physical deterioration of a property due to lack of periodic repairs, routine maintenance, and necessary replacements. Commenting that a property has deferred maintenance issues is a polite way of saying it appears shabby and needs work.

deferred payments Payments to be made at some point in the future. Some leases have deferred payment provisions rather than free-rent concessions. With deferred rent payments, the tenant pays no rent for the first 3 to 12 months, but then will pay higher-than-market rent for the balance of the lease term as the tenant makes payments on the rent that accrued in the early months.

deficiency The amount due on a mortgage loan after adding all expenses of foreclosure and accrued interest to the principal balance of the loan and then deducting the sale price or lender-bid price for the property. The balance remaining, if any, may be collected by the lender by means of taking a deficiency judgment, unless prohibited by law or contract. Deficiency judgments may be collected just like any other judgment, through seizure of other assets or garnishment. There are two circumstances when a lender may not collect any deficiency:

1. In states with consumer protection statutes that outlaw deficiencies on first mortgages on a borrower's principal residence.
2. With mortgage loans designated as nonrecourse, meaning the lender and borrower agreed in advance that the property would stand for the debt and there would be no deficiency allowed in the event of foreclosure.

deficiency judgment A lawsuit and judgment against a debtor for the remaining balance due on a promissory note after giving credit for any repossessed or foreclosed collateral.

Example: *Sarah has a mortgage for $200,000 on her home. She defaults on her loan, and the bank forecloses. The bank sells the home at a foreclosure auction to a third party who bids only $160,000 because the home has been allowed to deteriorate and needs many repairs. Sarah still owes the bank $40,000 unless she lives in a state that does not allow deficiencies on home loans. The bank may sue Sarah and obtain a judgment for $40,000, called a deficiency judgment.*

definition of value In a formal appraisal, the bottom line—the statement with the appraiser's estimate of value, after all calculations, comparisons, and reconciliations.

delayed (tax-free) exchange See *1031 exchange*.

delinquency rate The number of loans with delinquencies divided by the total number of loans; also calculated alternatively as the total principal balances of loans with delinquencies divided by the total principal balances of all loans. Commercial lenders look at historical and current delinquency rates for differing types of properties—apartments, office buildings, warehouses, and others—as part of the analysis for the interest rates and terms they will offer on a particular loan.

delinquent Past due.

delivery The transfer of possession from one person to another. Deeds and leases require delivery before they are effective. Delivery does not depend on manual transfer, but does depend on the intent of the parties. Deeds are delivered when placed within the possession or control of the grantee in such a manner that the grantor cannot regain possession or control.

demand deposit account A checking account. One may demand payment of the money on deposit without penalty. Contrast with a certificate of deposit, in which one must pay a penalty if the money is withdrawn early.

demand loan A loan that states it is due upon demand, rather than on any certain date or upon the happening of a certain event. For purposes of calculating the statute of limitations within which to sue on a demand loan, it is treated as if demand were made and default occurred on the very first day the loan was made, even if that did not truly happen in fact.

de minimis PUD A planned unit development (PUD) in which the common areas have minimal value; a no-frills project.

de minimis settlement A settlement agreement between the Environmental Protection Agency (EPA) and a property owner who may be technically liable for cleanup under the strict liability provisions of the Superfund, but who did not create nor contribute to the contamination and who acquired the property without knowing or having reason to know of the earlier contamination. Although a de minimis settlement is always a possibility, the EPA is by no means required to offer such a deal, so it is truly "buyer beware." See *CERCLA*.

demise A transfer of an interest in real property for a certain number of years, for life, or at will. This is why leases often refer to "the demised premises." The use of the word demise in an instrument automatically triggers the grantor's liability for the warranty of quiet enjoyment.

demised premises The property leased. See *demise*.

demising partition or wall A wall separating two tenants or separating a tenant's space from a corridor or other common area space.

demographic Pertaining to characteristics of the population, such as race, age, household income, median home price, and number of inhabitants per household. The U.S. Census Bureau (www.census.gov) collects a wealth of demographic data.

Example: *Families without insurance, 2003 and 2004:*

	2003			2004		
Family Income	**Total (in millions)**	**Number Uninsured (in millions)**	**Percent Uninsured**	**Total (in millions)**	**Number Uninsured (in millions)**	**Percent Uninsured**
All	288,280	44,961	15.6%	291,155	45,820	15.7%
Less than $250,000	73,881	19,603	26.5	73,012	19,437	26.6
$25,000 to $49,999	74,278	13,221	17.8	73,791	13,565	18.4
$50,000 to $74,999	53,672	6,018	11.2	54,982	6,373	11.6
$75,000 or more	86,449	6,119	7.1	89,371	6,445	7.2

demography A study of the characteristics of people living in an area.

demolition A destruction and removal of some or all of an existing structure. The process of demolishing something is usually shortened to the verb *demo*, as in, "We're going to demo that space next week to prepare it for the next tenant." A demolition usually requires a permit from the same local government agency that issues construction permits.

demolition clause A clause that allows landlords to cancel a lease in the event they decide to demolish the building.

density In zoning, the number of things allowed per unit of land, such as number of houses, occupants, or families per acre.

Department of Housing and Urban Development (HUD) Created as a cabinet-level agency in 1965, the stated mission of HUD (www.hud.gov) is "to increase homeownership, support community development and increase access to affordable housing free from discrimination. To fulfill this mission, HUD will embrace high standards of ethics, management and accountability and forge new partnerships—particularly with faith-based and community organizations—that leverage resources and improve HUD's ability to be effective on the community level."

The most common HUD-related activities are

- Acquisition and sale of all FHA-insured homes that are foreclosed on
- Involvement in moderate-income and low-income housing
- Removing barriers to minority ownership of homes
- Community planning and development
- Native American housing

Department of the Interior (DOI) A department of the federal government, established in 1849 to take charge of the country's internal affairs. Lightheartedly referred to as the "department of everything else" at one time, it was originally responsible for all affairs not handled by the Department of Foreign Affairs (now the State Department), Treasury Department, and War (now Defense) Department. Today, it is responsible for Indian affairs, national parks, wildlife management, and surface mining, to name a few areas. More information is available at its Web site, www.doi.gov, which includes Webcams for several national parks and the city of Washington, D.C.

Department of Veterans Affairs (VA) Established on March 15, 1989, to replace the former Veterans Administration, it is currently the second largest of the 15 Cabinet departments and is headed by the secretary of veterans affairs. It provides a wide variety of programs, including guarantees of mortgage loans received by eligible veterans.

departure provision An older term rendered obsolete by the July 1, 2006, changes to the Uniform Standards of Professional Appraisal Practice (USPAP), but it is still frequently encountered. It refers to the ability of an appraiser to render less than a complete appraisal in certain limited situations and only if the person reading the appraisal would not be misled or confused. Omissions might include particular appraisal methods deemed unreliable or impractical under the circumstances.

depletion An accounting and tax term referring to deductions made to account for land becoming less valuable because of the removal of natural resources, including timber and geothermal deposits of hot water or hot rocks.

Examples of items eligible for the IRS depletion allowance under 26 U.S.C. §613(b) are

Borax	Marble	Carbon dioxide
Mollusk shells	Clay	Oil and gas
Coal	Potash	Copper
Sand	Gold	Silver
Granite	Shale	Gravel
Slate	Iron	Stone
Iron ore	Sulfur	Limestone
Timber		

For more information, see Publication 535, "Business Expenses," Chapter 10, "Depletion," available at the IRS Web site, www.irs.gov.

deposit Money paid to ensure performance under a written or oral contract. Many states require that lease and other such deposits be maintained in escrow accounts and earn interest which must be paid to the party when the deposit is refunded. All real estate brokers must place earnest money deposits in escrow accounts. One must carefully examine the particular contract language relative to deposits in order to determine the circumstances under which they may be withheld from the depositor.

Deposit Insurance Fund An entity under the control of the Federal Deposit Insurance Corporation, with two subfunds called the Bank Insurance Fund and the Savings Association Insurance Fund. Depositors are insured to the extent of $100,000 of deposits per depositor per insured institution. Bank customers who buy securities offered by the financial institution do not receive insurance for those securities. By law, one should see prominently displayed on all such literature: "Not Insured by FDIC."

deposition Out-of-court testimony under oath by a witness or other party either during the pendency of a lawsuit or in order to preserve evidence in the event of a lawsuit. The testimony is recorded and transcribed by a court reporter, and the deponent (the person giving the deposition testimony) then signs the transcript to confirm that it is a true and accurate record of the questions asked and the answers given. Deposition testimony is admissible in court under some circumstances if the deponent is unavailable to testify. Especially when dealing with elderly persons, if there is some dispute over title to real property or the effects of adverse possession, it is good practice to obtain deposition testimony.

Depository Institutions Deregulation and Monetary Control Act of 1980 Federal legislation that accomplished phenomenal deregulation of federally chartered financial institutions, leading to state deregulation so that state-chartered financial institutions could compete with their federal cousins. Regulation Q phased out the former limits on interest that could be paid on deposits. Many analysts say that the resulting unbridled competition for depositors' money, leading to a bidding war to gain depositors, drove financial institutions to make ever riskier loans in order to obtain the high interest rates necessary to service the deposits. According to such analysts, this legislation was one of the primary factors in the savings and loan crash, the banking crisis, and the FDIC bailout of the mid to late 1980s.

depreciable basis See *basis*.

depreciable life See *accelerated cost recovery system*.

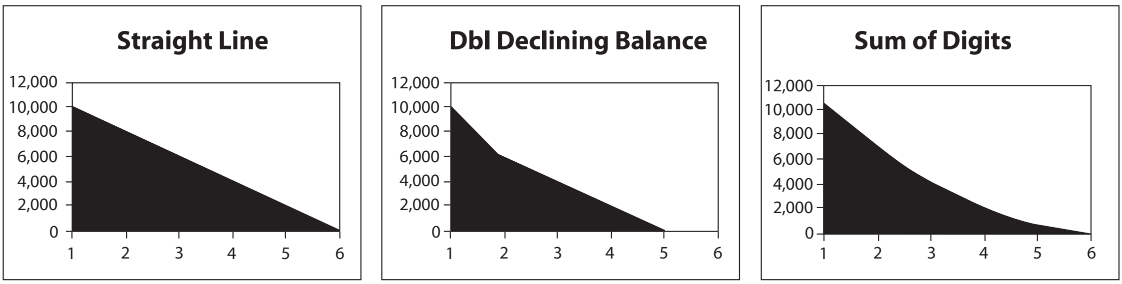
depreciable real estate Property capable of supporting depreciation deductions. As a general rule of thumb, improvements may be depreciated but land may not. Land may be depleted, however, if minerals are extracted.

depreciated cost See *book value*.

depreciation (1) In accounting, the process of deducting some portion of the acquisition cost of property over time, as an expense against income, to reflect the fact that the property is becoming less valuable and will eventually require replacement. One cannot allow a $3,000,000 building to remain on the books for 35 years as an asset at the same value and then, suddenly one year, demolish the building, write off $3,000,000 against income for that particular year, and then construct another building or move. (2) In appraisal, a reduction in the calculations for the reproduction cost of an improvement, in order to arrive at a value of the improvement in its current state, not as it would be if it were reproduced and brand new.

depreciation methods Various accounting tools for calculating depreciation. The most common is the straight-line method, in which equal pro rata shares are deducted each year until one reaches $0 or a salvage value, as the circumstances may warrant. The second most common is the double-declining balance method. Some accountants still use the sum-of-the-years-digits method, although this is no longer allowed for tax purposes.

Example: *Following are three graphs representing the depreciating value of a $10,000 asset with a useful life of 5 years and a salvage value of $0, using the three different methods.*



depreciation recapture A tax law provision that some depreciation expenses taken on real property must be "recaptured" upon a sale of the asset and taxes paid at ordinary income rates rather than capital gains rates. Ordinarily, property held for more than one year and then sold will qualify for capital gains tax rates, which are lower than ordinary income tax rates.

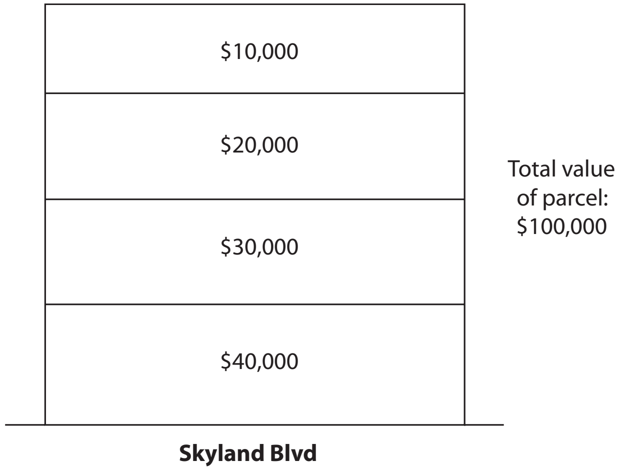
There are two exceptions in which some or all of the gain must be taxed at ordinary income rates:

1. If depreciation was taken on personal property, that portion of the gain that is equal to total depreciation taken over the years will be taxed at ordinary income rates.
2. If accelerated depreciation was taken on real property (see *depreciation methods* for an explanation), then that portion of the gain represented by the difference between straight-line depreciation and the accelerated depreciation will be taxed at ordinary income rates.

depth The distance between the front and the rear property line of a lot. Because local government rights-of-way for streets and sidewalks may exceed the actual width of the pavement, the lot depth may be less than the visible yard.

depth tables In a tax assessment appraisal, a set of tables that evaluate the relative value of artificially defined slices of property as one proceeds at greater depths from the street frontage. The first, and most simple, table is the 4–3–2–1 table. It describes the front quarter of a parcel as representing 40 percent of the total value, the next quarter as representing 30 percent of the value, the next quarter as representing 20 percent of the value, and the rearmost quarter as representing 10 percent of the value. Commercial appraisers consider the use of depth tables unreliable.

Example: *Here is an example of a depth table.*



deraign To prove ownership of land; to trace the chain of title.

dereliction The gradual receding of water to leave dry land.

derivative acquisition See *acquisition*.

derivative investments Investments that rely on the performance of underlying assets in order to establish value and return profits.

descent A method of acquiring real property, when the prior owner dies without a will and the laws of intestate succession determine the person or persons who will acquire title by descent.

description The information in a deed that will precisely identify the land being conveyed, in such a manner that it cannot be confused with any other land. It is not appropriate to use a street address or a tax parcel identification number in a deed, except as additional information to aid in the description. There are three predominant types of description:

- Metes and bounds. Includes an independently verifiable starting point, distances of lines and directions, and angles between lines.
- Aliquot parts. Uses portions of one or more sections (640 acres), half sections (320 acres), quarter sections (160 acres), or quarter-quarter sections (40 acres).
- Subdivision plat. Makes reference to subdivision plats, such as "Lot 9, Block 3 according to the plat or map of Sunny Acres as recorded in the County records at Plat Book 182, Page 79."

designated broker See *principal broker*.

detached housing Homes with freestanding walls not shared with any other house. Contrast with row house, duplex, or townhome.

determinable fee See *future interest* and *fee simple determinable*.

detrimental reliance Taking an action or failing to take an action because of a representation made by another person that turned out to be untrue.

> **Example:** *Jake called his mortgage company to find out the remaining balance due on his home loan. The lender sent Jake a letter advising him the payoff was $28,312. The sum was small enough that Jake decided to sell his car to pay off the home loan, quit his job, and take a year off to write a novel. After he sent the money in, the mortgage company advised him that it had made a mistake and the payoff was really $48,312, so he needed to pay an additional $20,000 to satisfy the mortgage. A court may apply the theory of estoppel against the mortgage company and force it to satisfy the loan without any additional money, because Jake had detrimental reliance on the mortgage company's representations.*

developer One who transforms raw land into improved real estate.

developer profit The increase in value caused by the efforts of a developer.

development The process of improving raw land.

development impact fee See *impact fees*.

development loan A loan used to develop real property, which includes not just construction of the improvements, but also excavation work, infrastructure such as storm sewers and roads, and the holding costs of the property until such time as it can be sold or can support fully amortizing permanent financing. Contrast with a construction loan, for building improvements only.

devise A transfer of real property by virtue of the provisions in a will. Contrast with descent, which is a transfer by virtue of statutory provisions controlling ownership of real estate when one dies without a will.

devisee A person who inherits real property by virtue of provisions in a will.

diffused surface waters Water that comes from rain, melting snow, or underground springs and that spreads over the surface of the land. The concept is important because

1. Applicable local environmental laws may require developers to provide siltation and erosion control for diffused surface waters traveling over disturbed land.
2. In some states, called common enemy states, property owners may do what they want with diffused surface waters—impound them and deny water to lower landowners, or dam one's own land to prevent a watershed and cause flooding to the upper landowners.

3. In other states, using the civil law rule, property owners may not dam diffused surface waters to the damage of upper owners, nor may they impound diffused surface waters and deny water to lower property owners.
4. Still other states use the common enemy rule for urban land and the civil law rule for rural land.

diluvion The gradual washing away of soil along a watercourse. Contrast with accretion, the gradual adding of soil to land along a watercourse.

DINK An abbreviation for "dual income, no kids." A slang expression for a particular income market.

dinosaur pen A traditional mainframe computer room complete with raised floor, special power, and its own ultraheavy air conditioning.

DIP See *debtor in possession*.

direct capitalization Dividing the net operating income of a property by a selected capitalization rate to arrive at a value. Contrast with *yield capitalization*.

direct costs Construction costs that are readily identifiable, such as labor, materials, and construction management fees. Contrast with indirect or soft costs which cover an allocation for overhead plus all expenses spent away from the construction site, such as legal, accounting, permitting, and construction period interest. Sometimes called hard costs.

direct endorsement A mechanism that allows HUD-approved lending institutions to approve FHA mortgage insurance themselves, without having to submit paperwork to HUD and wait for approvals.

directional growth The direction in which a city or town seems to be growing. This is important in appraisal and in making decisions to purchase speculative real estate to hold for later sale or development.

direct participation program (DPP) An investment vehicle that allows parties to directly participate in the cash flows and tax benefits of the underlying property, without requiring any active management by the investor. The investment will be shares of a partnership, a subchapter S-corporation, a limited liability company, or some other entity that files an informational return with the IRS but does not itself have any taxable income or deductible losses.

direct reduction mortgage A mortgage loan in which at least a portion of each month's payment is used to reduce the principal balance of the loan—there is a direct reduction of the principal balance, resulting in next month's interest being smaller. When a borrower makes a fixed payment each month according to a fully amortizing loan schedule, the entire loan balance will eventually be paid by the anticipated maturity date. That is the most common type of direct reduction mortgage, but a wide variety of other options is possible.

direct sales comparison approach Formerly known as the market data approach, this is an appraisal method in which the property being appraised is compared to sales of similar properties in order to arrive at a value. The appraiser identifies the comparable properties as being similar in time and somewhat similar in size, quality, use, and amenities, among other considerations. The appraiser then makes adjustments to the sales price of the comps, based on how they differ from the specific property.

> **Example:** *A home with a three-car garage might be reduced by $25,000 in order to make it comparable to the subject home with a two-car garage. After making the adjustments, the appraiser then reconciles all the comparables to arrive at an opinion of value for the subject property.*

disbursement Payment of money.

discharge in bankruptcy The release of a debtor from the payment of any and all debts except those specifically approved by a bankruptcy court.

disclaimer (1) The refusal or rejection of a right, as a disclaimer of an inheritance of environmentally contaminated property. (2) The limitation of a warranty or responsibility.

disclosure statement (1) Also called the Reg-Z box, information required by Regulation Z of the federal Truth in Lending Act. (2) Any other federally required or state-required document designed to inform consumers of rights, responsibilities, or property defects.

Annual Percentage Rate	**Finance Charge**	**Amount Financed**	**Total of Payments**
The cost of your credit at a yearly rate	The dollar amount the credit will cost you	The amount of credit provided to you or on your behalf	The amount you will have paid after you have made all payments as scheduled
A%	$**B**	$**C**	$**D**

A: The annual cost of the loan, as a percentage. Usually higher than the quoted interest rate because of the additional cost of prepaid interest and other finance charges.
B: If all payments are made on time, and the loan is paid in full over its expected term, "B" is the total of all interest, prepaid interest, and mortgage insurance payments over the life of the loan.
C: The loan you applied for, less prepaid interest and other up-front finance charges such as commitment fees, origination fees, or mortgage insurance premiums paid up front.
D: The total of all payments (principal, interest, and mortgage insurance) if the loan is paid in full over the entire term.

Disclosure is required by the Truth in Lending Act.

discount To sell at a reduced value, such as selling a $100,000, 30-year, 8 percent mortgage for $90,000 in order to raise immediate cash.

discount broker A real estate broker who offers limited services in return for a commission rate lower than what is generally available in the marketplace. The most common service offered is listing a property on a multiple listing service, but all prospective buyers are then referred directly to the owner.

discounted cash flow Also known as a present value analysis; an approach to analysis of an income-producing property by calculating the present value of a future income stream with the use of a discount rate. The two most common methods are the internal rate of return method and the present value method.

discounting The appraisal method of computing the value of an income-producing property by calculating the present value of anticipated cash flows.

discount points Mortgage fees charged by the lender and treated as additional interest above the face rate in the promissory note in order to obtain an effective rate higher than the stated rate. One point is equal to 1 percent of the loan.

discount rate The rate at which the Federal Reserve loans money to lenders to cover short-term cash needs, usually for overnight loans. Increases or decreases in the discount rate almost always signal similar increases or decreases in bank loan rates to customers, even though the two are not directly tied to each other.

discrimination (1) The act of making generalized distinctions among groups of people or things without inquiry into the specific characteristics of individuals within the group. This includes illegal discrimination such as that based on race, color, sex, age, disability, religion, or family status (protected classifications) and legal discrimination such as a builder's bias for or against local subcontractors. Federal and state laws prohibit denying or discouraging housing or credit choices for persons in protected classifications. (2) The unintentional but still illegal effect of barring certain groups of people from access to housing, credit, goods, or services because of their race, color, sex, age, disability, religion, or family status. This is called disparate impact. An example would be a prohibition against tenants having animals in their units, which would work a hardship to the sight-impaired who rely on guide dogs. (3) Specific federal laws addressing discrimination include the

- Americans with Disabilities Act
- Fair Housing Act provisions of the Civil Rights Act of 1964
- Equal Credit Opportunity Act

disintermediation The situation that exists when depositors withdraw their savings from financial institutions and invest the money directly in the marketplace, usually because they can obtain a higher yield even though also running a higher risk of losing their money.

disparate impact A legal doctrine in discrimination cases whereby the plaintiff demonstrates a type of discrimination that is perhaps not intentional, but which has the effect of barring certain citizens from full access to rights, property, or experiences. The courts may examine a policy that appears neutral on its face but which has a different (disparate) impact on a protected class than others. Once a plaintiff in a lawsuit proves that a disparate impact exists, the defendant must then prove there is a valid and nondiscriminatory reason for the statistical imbalance.

disposal field The area where wastewater from a septic tank drains into specially prepared ground for further purification.

disposition costs The seller's expenses of sale.

dispossess proceeding One name for the legal proceeding commonly known as an eviction.

disseisin The wrongful deprivation of possession of real property; a wrongful eviction.

dissolution A termination, as of an agreement, contract, corporation, or partnership.

Distinguished Real Estate Instructor (DREI) A designation granted by the Real Estate Educators Association (www.reea.org).

distraint The legal right of a landlord to obtain a court order and seize tenants' possessions to pay for back rent.

distressed property Real property that suffers a reduction in its market price because of pressures operating on the owner, such as threatened foreclosure, divorce, settlement of an estate, or fear of economic changes that might decrease the value.

distressed sale The sale of real property under circumstances creating great urgency on the part of the seller, such as impending foreclosure, divorce, relocation to another city, or any other such pressure.

distribution real estate The modern term for industrial real estate, because most industrial operations today involve assembling components and/or distributing goods rather than the old smokestack manufacturing uses.

divided interest An interest in some portion of the bundle of rights in real estate, such as a leasehold interest or a remainder interest. (This does not mean a particular percentage of interest or a cotenancy.)

doc-in-a-box A popular term for a neighborhood or other retail-type medical office specializing in walk-in patients.

dock-high building An industrial building with loading docks at the height of a delivery truck, opening to a floor at the same height.

dockominium Condominium ownership of a boat slip or dock. The owner sometimes obtains a deed to the small parcel of land under the water and has the right to use the common elements consisting of the docks and perhaps some storage space, bathroom facilities, parking, and other such things. The concept is still relatively new and is meeting legal challenges from people claiming that it is inconsistent with doctrines of public trust and riparian rights. According to opponents, navigable waters are not subject to private ownership and, as a result, no one can sell condo-type rights in a boat slip upon the waters. (Before investing in a dockominium, it might be wise to check out the status of this emerging area of the law.)

documentary evidence Traditionally, evidence in the form of written papers or documents. Today, many government agencies, such as the IRS, accept printed versions of electronic documents when regulations require documentary evidence. See also *Uniform Electronic Transactions Act*.

documentary letter of credit Used somewhat like cashier's checks, but with more safeguards. The typical documentary letter of credit will allow payment to a vendor upon the vendor's presentation of the letter and certain documents, such as proof the goods were placed on board a vessel for shipment to the United States.

Dodge, F.W. A company that provides a wide variety of reports and services relevant to the construction industry. Its Web site is at www.fwdodge.construction.com.

dog Slang for an undesirable property.

domicile The place of one's principal residence.

dominant tenement (or estate) Land that benefits from an easement that burdens another property, called the servient tenement.

donee One who receives a gift.

donor One who gives a gift.

dormitory town See *bedroom community*.

dotal property An archaic term meaning the property the wife brings into a marriage in order to assist her husband in setting up the household.

double declining balance An accounting method employed to approximate the situation of an asset losing value (depreciating) more rapidly in the early years after acquisition and then more slowly in later years.

double escrow A process of flipping a property in a simultaneous closing. If anybody defaults, then everybody defaults.

double-load corridor A building design in which there are apartments or other individual units on both sides of a passage corridor. Contrast with single-load corridor.

double taxation A situation said to exist when a corporation must pay taxes on income, make dividend payments to shareholders on after-tax dollars, and then the shareholders must again pay taxes on the dividends. This is the situation with normal corporations, called C-corporations, that do not qualify for S-corporation (small corporation) status. S-corporations file reports allocating pro rata shares of all income to the individual shareholders, who then pay taxes on that number. The corporation itself does not pay any taxes.

dower A widow's rights in the real property of her deceased husband. The similar right of a widower in his deceased wife's property is called curtesy. Many states have abolished these rights and replaced them with a more generic homestead right or surviving spouse's share.

down payment The balance of the purchase price for property after credits for money contributed by lenders. See *equity*.

downzoning The process of changing the zoning on a parcel to a use that is less intensive than formerly allowed. Property once zoned for multifamily residential use might be downzoned to single-family residential use.

dragnet clause A clause in a mortgage loan that spreads a dragnet, which, in fishing, is a large net dragged across an area in order to capture everything it encounters. Similarly, a mortgage dragnet clause attempts to capture as much as possible for the lender. There are three types; some or all may appear in a mortgage loan. One seeks to make all debts of the borrower includable in the mortgage so that even a checking account overdraft may be deducted from sale proceeds when the property is sold. Another type attempts to extend the mortgage to other properties acquired by the borrower at a later date. In addition, a dragnet clause can provide that default in any other loans will constitute a default in the mortgage loan, even if the mortgage payments are current. Courts disfavor dragnet clauses and tend to scrutinize them very carefully in order to limit their reach, or sometimes they even find them unenforceable. If opposed to a dragnet clause in a promissory note or mortgage, one should request its deletion.

drainage rights Legal principles regarding the ability of a property owner to divert the natural flow of water onto another property. Whether it is allowed or not depends on the state, sometimes on whether the land is urban or rural, or on what's reasonable under the circumstances.

draw (1) A request that a lender advance funds under a construction or other future-advances loan. (2) A periodic request by a contractor or subcontractor for a portion of the contract price for a job, usually according to the percentage of completion of the work and the cost of materials and labor.

DREI See *distinguished real estate instructor*.

dresser drawer title See *trunk title*.

drill track A segment of rail track that connects various individual industrial spurs to the main railway. When negotiating for the purchase or lease of industrial property, one should make sure there are provisions for a drill track, which usually requires easements over the properties of other owners.

drive-by appraisal A value estimate made without examining the interior of a property. There is nothing inherently wrong with such an appraisal, as long as it is disclosed.

Drug Enforcement Act Relevant to real estate as it allows seizure of real property if illegal drug activities take place on it. Innocent owners may successfully contest the seizure after expending large sums of money to lawyers to prove that the owner had no involvement and no knowledge of the drug activity or took steps to stop the illegal activity but was unsuccessful. (The lesson for property owners is that if you are suspicious about drug-related activity in your apartments or other properties, you cannot take a "live and let live" approach to the problem.)

dry closing A closing that is completed except for the disbursement of money and delivery of documents. Often used when a buyer delivers a personal check at the closing and the closing company must wait until the funds are collected in order to complete closing.

dry hole clause A provision in an oil and gas lease that specifies rent payments in the event of a dry well.

dry in To install black roofing felt (tar paper) on a roof. When completed, one says the building is "in the dry" or "in the black."

dry mortgage A nonrecourse mortgage, in which the lender looks solely to the property for recovery in the event of default and has no rights to sue the borrower for a deficiency judgment if the property is worth less than the loan balance at the time of foreclosure.

Dryvit A brand name for a particular exterior insulation and finish system (EIFS) that resembles stucco. There has been extensive class-action litigation as a result of claimed deficiencies in the system as a whole, not just the Dryvit brand. Unfortunately, Dryvit has come to be synonymous with the entire industry, much the same as Xerox for copiers and Kleenex for facial tissues.

drywall Also called wallboard or gypsum board, it is a panel of gypsum covered on both sides with paper and used as the primary wall material in home construction. Commonly also called by a particular brand name, Sheetrock.

dual agency A relationship in which an agent represents two principals—clients—who may have competing interests. Most often encountered when one agent in a real estate company has a listing on a property and represents the seller, and another agent has a buyer-agency relationship with a buyer interested in the same property. Technically speaking, the managing broker is the agent of both parties and acts as a dual agent.

dual contract The illegal and unethical practice of providing two different sets of contracts for the same transaction—usually one at an inflated price so that 80 or 90 percent financing will, in actuality, pay 100 percent of the true purchase price. This practice constitutes fraud.

due care A legal concept meaning just, proper, and sufficient care under the circumstances. It is the care that would be taken by a reasonable person. For example, tenants are required to take due care of leased property and not use a barbecue grill in the living room.

due diligence The process of investigating all facts, conditions, rules, laws, regulations, financial considerations, or any other such matters as would affect one's decision to purchase property. The various types of investigations as would comprise due diligence will vary from property to property. With the purchase of a home, it might include nothing more than a home inspection, termite report, and a review of any restrictive covenants. When purchasing raw land for development, it could include zoning issues, possible environmental contamination, surveys, soil compaction studies, analysis of cost to develop versus value when completed, and so on as far as the imagination can go.

due-on-sale clause A clause in almost all mortgage loans providing that the entire balance of the loan will be due and payable if the property is sold, even if all payments are current and there has never been a default; effectively destroyed former widespread ability to assume mortgages. The clause allows lenders to control their interest rate exposure in a rising market, so they are not left with a portfolio full of low-interest-rate loans in an era of high interest rates. It also allows lenders to fully investigate any purchaser and make independent underwriting decisions about that purchaser and whether to extend a loan or not. A due-on-sale clause is not enforceable against someone who inherits property from a relative and intends to live in that property as a principal residence. See also *assumable loan*.

dummy A straw man, as when a developer desires to purchase a number of properties in order to assemble them and build a shopping center but is afraid that owners will increase their asking prices if they know the true name of the buyer. Owners sell to the dummy, who then transfers to the developer.

duplex A building separated into two homes.

durable lease A lease with an annual rent and a term "for as long as the grass grows or the water runs." In most states, leases over 20 years in length must be recorded or they are void for their period beyond 20 years, and leases longer than 99 years are void for any longer periods, even if properly recorded.

durable power of attorney A power of attorney instrument gives one person—the attorney in fact—the power to act for another in a general manner for all things, or for specifically listed things or areas described in the power. The power ceases as soon as the person granting it—the principal—dies or becomes legally incompetent. A durable power of attorney is different, in that it continues even though the principal becomes incompetent, but still terminates upon death. Used by many elderly people to allow children to manage their affairs in the event of mental disability, but without the stigma, expense, and court oversight of a formal declaration of incompetence and appointment of a guardian.

duress Unlawful pressure, force, or threats by one person against another. If one is the victim of duress, then any contract or agreement entered into as a result of the duress is void. The operative word in the definition is "unlawful." Many people claim economic duress when a lender, for example, threatens foreclosure unless a borrower signs a new loan agreement with onerous terms, a high interest rate, and large fees for attorneys and other expenses. Usually, if the lender had the right to foreclose, then the threats cannot be unlawful and duress does not exist.

Dutch auction An auction in which the asking price is lowered gradually until someone is willing to pay at that level, and the property is then sold to that person. Contrast with the typical auction practice in which the auctioneer asks a high price, lowers it until someone places a bid, and then the auctioneer attempts to obtain higher bids to increase the price from there.

duty to disclose The legal responsibility of a seller, broker, or agent to tell a potential buyer about a defect in the premises. Some states have laws requiring disclosure of certain named and described conditions in addition to anything else that might constitute a defect.

dwelling A place of habitation.

dwelling defense In most states, people are allowed to use some degree of force to protect their dwelling and the inhabitants. They may not set traps for intruders, and they are usually entitled to use only the force reasonably necessary under the circumstances to deter the intruder. Some states allow deadly force, however, without any requirement that the home occupant first attempt to escape, or "otherwise avoid using force with complete safety." The defense is based on 500-year-old English court decisions that one's home is one's castle and entitled to defense. See *castle—man's home as*.

DWV (drain-waste-vent) The section of a plumbing system that carries water and sewer gases out of a home.

E

early occupancy If agreed among the parties, the ability of a purchaser to take possession of property before closing. Under some circumstances, a buyer who takes early occupancy may be considered as assuming the risk of loss if there is a fire or other destruction of the property. In other words, the buyer may be obligated to proceed to closing at the full purchase price, even if the seller has no insurance coverage.

earnest money A deposit of money made by the purchaser of real estate. It can serve the following purposes:

- It shows evidence of economic resources and the probable ability to proceed to closing.
- It provides hostage value because of the usual contract provision that seller may retain the earnest money in the event of default.
- It may allow enforcement of a contract that might be defective on purely technical grounds. For example, some states allow enforcement of an oral real estate contract when there has been partial performance by the payment of earnest money. This occurs often, as when a buyer submits a written offer for property and an earnest money check. The seller makes a verbal counteroffer, and the buyer verbally accepts. The seller deposits the check. No one ever thinks to prepare a new written contract for signatures. Standing alone, this is an oral contract that is unenforceable under the Statute of Frauds.

earnest money contract A real estate purchase contract with a provision for earnest money.

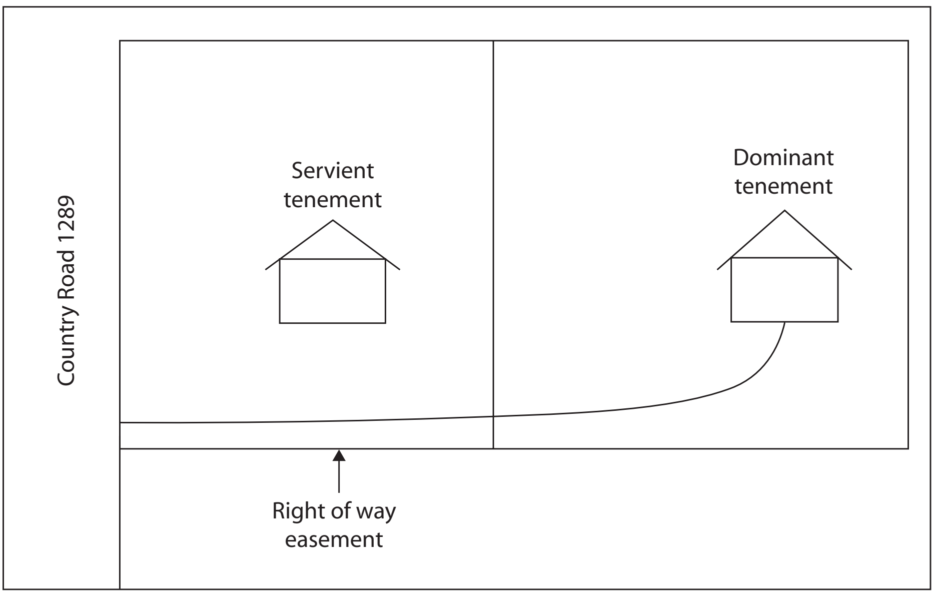
earnings before interest, taxes, depreciation, and amortization (EBITDA) (pronounced "ee-bit-dah") Net earnings of a business before deductions for interest, taxes, or depreciation. It often provides the standard for purchase of income-producing properties or going-concern businesses, with buyers and sellers conducting negotiations in terms of multiples of EBITDA, such as an offer to buy at "seven times EBITDA."

earthquake strap A metal strap used to secure gas water heaters to the framing or foundation of a house; intended to reduce the chances of having the water heater fall over in an earthquake and cause a gas leak.

easement A nonpossessory right to use another's property. Easements may be created by express words of grant in a written document, by prescription (unrestricted usage over time resulting in property rights), or by necessity, as when the law will force the grant of ingress and egress rights for landlocked property.

- Easements are said to be appurtenant or in gross. If appurtenant, then the easement benefits one property and burdens another one. The property being benefited is called the dominant estate, dominant tenement, or dominant hereditament—they all mean much the same thing. The one with the burden is called the servient estate, tenement, or hereditament.
- Easements appurtenant stay with the land, no matter who owns it or how many times the land changes hands. An example is a right-of-way easement.
- If the easement is in gross, then it is personal to someone and does not benefit a particular property. A common example is a power line easement. The easement stays in effect no matter who owns the land burdened by the easement, but typically expires with the death of the owner of the easement.
- An easement may not unduly burden the property.

Example: *A right-of-way easement may have been originally granted so one farmer could cross the property of another to reach another field. Later, one farm is sold to someone who plans to build a 250-home subdivision and use the right-of-way as the construction entrance. Courts will not allow this.*



easement by necessity The legal ability of a property owner to use a right-of-way over the lands of another because the owner's property is landlocked and has no direct access to any public roads. Generally, the right-of-way must be a route that places the least burden on the other property, even if it is inconvenient for the landlocked property owner. See *easement*.

EBITDA (pronounced ee-bit-dah) See *earnings before interest, taxes, depreciation, and amortization*.

echo boomers Children of baby boomers; a distinct demographic with identifiable buying habits.

economic feasibility See *feasibility study*.

economic life The period of time during which an improvement has value in excess of its salvage value; the useful life span of an improvement.

economic obsolescence A factor that reduces the value of an improvement because of something external to the property itself. A well-built and well-maintained house may suffer economic obsolescence because it is located on one acre of land in the middle of a fast-food area on a major suburban road. The improvement—the house—no longer has any value at all. In this example, though, that hardly matters because the land is worth vastly more than the original homeowners ever dreamed.

economic rent The rent reasonably to be anticipated in the marketplace as opposed to the actual rent. For an investor familiar with economic rents in an area, there are usually many opportunities to buy properties at values based on contract rents, and then raise the rents and realize immediate growth in equity and the ability to refinance for amounts in excess of the original purchase price. Also called market rent.

effective age The apparent age of an improvement rather than its actual age.

effective gross income The anticipated gross income from a rental property after deducting an estimated amount for vacancies and bad debt.

effective interest rate The actual interest rate of a loan, regardless of the face interest rate or the rate quoted. See *annual percentage rate*.

effective procuring cause The broker who first obtains the serious attention of a buyer and brings the parties together.

effective rental rate True rent, after taking into account rent concessions; usually expressed as a dollar amount per square foot. Some parts of the country quote rents as dollars per foot per month; others use dollars per foot per year.

> **Example:** *If 5,000 square feet of office space normally rents for $20 per foot per year, but the landlord gives 6 months' free rent on a 5-year lease, then the effective rental rate is calculated as follows:*
>
> *5,000 feet × $20 per foot = $100,000 per year*
>
> *6 months free rent = $0*
>
> *4.5 years paid rent @ $100,000 per year = $450,000*
>
> *$450,000 paid rent spread over a 5-year term = $90,000 per year effective rent*
>
> *$90,000 effective rent ÷ 5,000 feet = $18 per foot effective rental rate*

effective yield A calculation of the return on an investment that considers the price paid, the time held, and the interest received.

efficiency apartment A small apartment with living, sleeping, and cooking areas all contained in one room.

efficiency ratio The ratio of leasable space to gross space in a building. When planning a building, it is important to balance the need to maximize the efficiency ratio in order to lease the maximum amount of space possible, against the aesthetic need to have wide corridors and open spaces.

efflux The expiration of a prescribed period of time, such as the end of a lease.

egress An exit.

EIFS See *exterior insulation and finish system*.

ejectment A legal action to restore possession of property to the party entitled to it.

ekistics The science of how people settle land areas, including urban development.

elasticity The ability of the real estate market to respond to price increases over a fairly short period of time.

elderly housing Housing occupied by persons 62 or older, or housing designed and marketed for persons 55 and older. Under the Fair Housing Act, elderly housing does not have to be made available to families.

election of remedies The necessity that injured parties make a selection of only one method of being compensated for their loss, rather than collecting multiple times in different ways. For example, if a certain lender behavior is a violation of the Equal Credit Opportunity Act and of local laws, the borrower may recover damages under one law, but not under both. In addition, some courts hold that when a seller breaches a contact to sell real estate, the buyer must choose between suing for damages or suing to force the seller to proceed with the sale. This does not prevent parties from suing for as many different theories as their lawyer can imagine, but they can have only one remedy at the end of the trial. (The concept of election of remedies is similar to the concept of double jeopardy—one can't be punished twice for the same wrong.)

elective share The ability of a surviving spouse to elect to take a specified percentage of the decedent's estate rather than the amount left by the will. Most states make some sort of provision so that a surviving spouse cannot be completely disinherited. The vehicle may be the common law rights of curtesy (the widower's share) or dower (the widow's share). Because of archaic concepts about the relative needs of surviving spouses, dower and curtesy did not provide the same benefits to husbands as to wives. As a result, many states passed statutes modifying the rules or even completely abolishing them in favor of a statutory scheme. The statutory system usually allows a surviving spouse to elect between taking what was provided in the will or taking a certain preset percentage of the decedent's estate.

electric lateral The trench or area in the yard where the electric service line (from a transformer or pedestal) is located, or the work of installing the electric service to a home.

electrical rough Work performed by the electrical contractor after the plumber and heating contractor are finished; normally the installation of all electric wires. The electrical contractor usually receives a substantial payment on its contract price at the completion of the electrical rough. Contrast with *electrical trim*.

electrical trim Work performed by the electrical contractor when the house is nearing completion. The electrician installs all plugs, switches, light fixtures, smoke detectors, appliance "pig tails," and bath ventilation fans and wires the furnace and "makes up" the electric house panel. The electrician does all work necessary to get the home ready to pass the municipal electrical final inspection.

electronic signature A method of sending identity verification over the Internet, usually through the use of a personal identification number (PIN).

eleemosynary corporation A nonprofit corporation. Also called a 501(c)(3) corporation.

elevation An orthographic (flattened; nonperspective) drawing of the various faces of a building, component, or improvement, showing examples of relevant details and something to indicate scale. One may have elevations of each side of a building, usually with a person standing nearby to illustrate scale; elevations of cabinets in kitchens or offices; or elevations of a storm sewer system showing a representation of the incline.

eluviation The movement of soil caused by excessive water within the soil.

emancipated minor (1) A child who is under the age of majority—18 or 21, depending on the jurisdiction—but who has taken advantage of state laws and obtained a court order to remove the disabilities of nonage and be declared a legal adult. As a result, such a child may enter into enforceable contracts and may, if not disallowed in the emancipation order, be allowed to sell real property. There is a difference of opinion among states about whether an emancipation order in one state will be given effect in another state. In other words, a child who has been emancipated in New York may or may not be allowed to enter into contracts or sell real property in another state. (2) A minor child may become emancipated from his or her parents when the child marries or enters the military service. The parents no longer have any rights or responsibilities concerning the child, but the child still may not enter enforceable contracts or sell real property until he or she has reached the legal age of majority or has obtained a court order removing the disabilities of nonage, as described earlier.

emblement A growing crop. Emblements are personal property and do not automatically pass with the land when a deed is executed. See also *fructus industriales*.

emerging markets A loosely defined term generally referring to countries with relatively stable governments, developing economies, and an increasing ability to spend money on consumer goods.

eminent domain The power of government to take land for the public good with the payment of just compensation. See *condemnation*.

empty nesters People whose children have matured, left the home, and established homes of their own. This demographic segment generally has disposable income, homes with large amounts of equity, and a desire to change living arrangements either by going smaller, by moving to a completely different locale, or by the addition of a second home.

encapsulate To remediate hazardous waste by surrounding it, such as spraying a special coating on asbestos.

encroachment The trespass of an improvement upon the land of another.

encumber To place a burden or a charge upon property. Commonly used to mean placing a mortgage, but may include other liens, easements, covenants, and restrictions. The burden is called an encumbrance.

Endangered Species Act A federal law originally intended to protect endangered species on federal land, but expanded to include protections wherever found, including private property. The existence of a protected species on one's land may prevent development or dramatically increase the expenses. This is not considered a condemnation, so there is no government compensation.

end cap In a strip shopping center (long and rectangular with large amounts of road frontage), the retail space at either end is called the end cap. Chain restaurants usually desire freestanding space, but will accept end cap. Any establishment requiring a drive-through window, such as a fast-food restaurant, dry cleaning store, or bank, will need end-cap space.

end loan (1) A permanent mortgage financing placed after construction financing. (2) A loan to buy stock in a cooperative apartment so one may rent a particular unit under a proprietary lease.

end money An amount of money held in reserve in case project costs exceed estimates in a development. Called over-and-above money in FHA rental housing projects.

endorsement (also spelled indorsement) Placing one's signature on the back of a check or other negotiable instrument in order to transfer ownership to another. Endorsers warrant payment of the instrument unless they sign with the additional words "without recourse."

energy efficient home tax credit IRS income tax credits granted when a taxpayer installs energy-saving components in a residence. The amount of credit varies with the type and cost of the particular equipment or features. Contractors who build new homes are eligible for some of the credits. For more information, see IRS Publication 553, "Highlights of 2005 Tax Changes," at www.irs.gov.

enhancement An increase; a betterment.

enjoin To issue an order from a court commanding one to take some action or cease some action. See *injunction*.

enterprise zone An area with the availability of tax incentives, grant money, or low-cost loans offered by local government in order to assist in revitalization.

entertainment complex A shopping center that features theaters, restaurants, amusements, and related retail stores.

entire tenancy A sole possession by one person. See *tenancy in severalty*.

entitlement (1) To be owed something under the law, such as federal entitlement programs. (2) That portion of a VA-guaranteed loan that protects the lender in case the veteran defaults.

entity A legally created person as opposed to a natural person. May include corporations, partnerships, limited liability companies, associations, joint ventures, real estate investment trusts (REITs), and traditional trusts.

entrants Newcomers; people who enter a market.

entrepreneur One who assumes risk in order to combine knowledge, capital, and resources to create a venture that will hopefully return a profit.

entry for marriage in speech An ancient court order (writ) to recover land given to a man in consideration of his promise to marry a woman, but if he did not marry the woman within a reasonable time, married another woman, or entered the priesthood, he was obligated to return the land.

environmental assessment A study of land to determine if there are any factors such as would possibly give rise to concerns about hazardous materials, protected species, historic remains, or other such factors.

environmental impact statement A written report containing an analysis of the ecology and general environment of an area, together with projections regarding how that will change during construction of the project and after completion and public usage. These statements were originally required by the National Environmental Policy Act of 1969, but only for federal projects. Today, most state and local governments require these statements for all large projects and selected smaller ones. The vast collection of federal environmental impact statements, for projects ranging from Alaska to Antarctica, may be accessed online at the Web site for the Transportation Library of Northwestern University, nucat.library.northwestern.edu.

environmental obsolescence Same as *economic obsolescence*.

Environmental Protection Agency (EPA) A U.S. government agency established in 1970 to coordinate all federal activities relative to safeguarding the nation's air, water, and land from dangerous substances. Its oversight includes research, monitoring, standard setting, and enforcement matters.

The EPA Web site at www.epa.gov offers information regarding all programs, educational tools, enforcement actions, and current and pending legislation.

The most significant programs from a real estate perspective are the

- Clean Water Act
- Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)
- Resource Conservation and Recovery Act

environmental site assessment (ESA) A report by an environmental engineer or other qualified professional regarding the existence of any environmental hazards or concerns.

EOY Abbreviation for "end of year."

EPA See *Environmental Protection Agency*.

epitome An abstract of title in book form.

Equal Credit Opportunity Act A federal law that ensures all consumers and businesses are given an equal chance to obtain credit, assuming they meet legitimate and legal underwriting guidelines. Enforcement is by a number of different agencies depending on the identity of the credit grantor. The FTC may bring an enforcement action against retail stores, utilities, and small loan companies, to name a few. The Office of the Comptroller of the Currency would be responsible for bank violations. No agency will intervene in private disputes, but it will monitor the patterns of violation and could make a decision to take action. Private individuals who believe they have been victims of a violation may bring private or class-action lawsuits against offenders. Among other things, it is illegal to

- Discourage an applicant because of sex, marital status, age, race, or national origin, or because they receive public assistance
- Ask an applicant to reveal his or her sex, race, national origin, or religion, except that it may ask that this information be voluntarily revealed in connection with a mortgage loan in order to compile statistics to assist the government in making sure discrimination does not take place
- Inquire about an applicant's plans to have or raise children
- Ask if an applicant receives alimony or child support, unless the applicant intends to rely on that income in order to qualify for the extension of credit
- Consider sex, marital status, race, national origin, or religion in making a decision to grant credit
- Consider whether you have a phone listing in your own name, although a creditor may consider whether you have a phone or not
- Consider the race of people in the neighborhood where the applicant wants to buy, refinance, or improve a house with borrowed funds
- Refuse to consider public assistance income the same as any other income
- Refuse to consider alimony or child support the same as any other income

It is not illegal to consider military status, citizenship, or sexual orientation, although specific state laws may extend protections to such groups. For more information, visit the FTC Web site at www.ftc.gov.

equal dignities rule A rule of law that if a contract must be in writing in order to satisfy the Statute of Frauds, then the authority of an agent to enter into such a contract must also be in writing.

equalization board A state or county agency responsible for ensuring consistency and fairness in real property tax assessments.

Equifax One of the three major credit reporting bureaus. It maintains a Web site at www.equifax.com. The other two bureaus are Experian and TransUnion. See also *Fair Credit Reporting Act*.

equitable conversion A doctrine commonly applied when death intervenes between the signing of a contract regarding real property and the actual closing. The purchase money and the real property are converted, or changed, into each other for purposes of determining the rights of heirs and surviving spouses. If a will left all personal property to one child and all real property to another, and the seller of real estate died before closing, then that particular parcel of property would be treated as if closing had taken place before death and the cash received, so that the child inheriting personal property would take the sale proceeds.

equitable lien A lien or charge on property arising because of some technical defect in a legal instrument such as a mortgage or because a court determines that the lien is only fair and just under the circumstances after considering all the facts.

equitable mortgage The declaration by a court that an instrument by which one is to pay money to another and, as a result, receive title to real property when all payments have been completed is in reality a mortgage, and the parties will be treated as if they had all the rights and responsibilities of a mortgage relationship. The exception is if an innocent third party buys the property; then the equitable mortgagor—the person making the payments—cannot recover the property but may only sue the seller for damages. See also *equitable lien*.

equitable ownership Describes the rights of a trust beneficiary in property, as opposed to the legal ownership resting in the name of the trustee.

equitable servitude A restriction on the use of land that runs with the land. It is often asserted when there is no writing and no legal document imposing any restrictions. Proponents will argue that the restriction is fair and just under the circumstances. If a court agrees with them, then an order will be issued describing the servitude and binding the land to it.

equitable theory of mortgages An operative theory in states that treat mortgages as instruments granting security rights to a lender, but legal title remains with the borrower at all times. These are called lien theory states. In lien theory states, lenders must usually resort to judicial foreclosure and obtain a court order authorizing sale of the property to satisfy a debt. The alternative is the title theory of mortgages and title theory states, in which the borrowers transfer legal title to the lender, who holds it in trust for the borrower under a deed of trust. Foreclosure in such states is nonjudicial because the lender already has the legal title. Some states are called hybrid theory states and transfer title to the lender in an instrument called a mortgage rather than a deed of trust but allow nonjudicial foreclosures.

equitable title (1) The interest held by one who has agreed to purchase property but has not yet closed. (2) The title held by a trust beneficiary, because the trustee has legal title but the law recognizes the beneficiary as having rights. See also *equitable conversion*.

equity (1) The difference between the value of a property and the mortgage debt on it is said to be the equity. Under federal law, when one's equity in property reaches 22 percent of the value of the property—when the mortgage has been reduced to 78 percent of the value of the property—then private mortgage insurance is supposed to be automatically cancelled if it is in place. (2) The ability of a court to do what's fair under the circumstances, without regard to many of the technical requirements of the law. Because real estate has always enjoyed a protected status in the courts, it is usually easier to obtain equitable relief when real property is involved. As an example, in a boundary line dispute there might be no legal theory to find in favor of a property owner who accidentally builds part of his house on his neighbor's land. Nevertheless, almost no court will require the property owner to tear down the encroaching part of the house. Instead, the court will usually "do equity" and require the landowner to sell, and the house owner to buy, the small amount of land necessary to fix the problem.

equity buildup The gradual increase in a person's equity in property because of the monthly payments of principal that reduce a loan amount.

equity dividend The annual cash flow that an equity investor receives.

equity loan A line of credit secured by the equity in the borrower's home. It is open ended, meaning the borrower may take advances, pay down the line to reestablish it, and then take advances against it as needed; usually renewed on an annual basis, with adjustable interest rates tied to the lender's prime rate. (Often called a HELOC—home equity line of credit.)

equity of redemption The rights a mortgage borrower has to reclaim property after default and before foreclosure. It is a right in real estate and may be transferred by deed, but a bill of sale of the right to another will be unenforceable. Contrast with *right of redemption*.

equity REIT A real estate investment trust (REIT) with underlying investments in income-producing properties. Contrast with a mortgage REIT that invests in mortgages, but not physical properties.

equity participation See *participating mortgage*.

equity sharing loan See *participating mortgage*.

equity stripping A term applied to a variety of sleight-of-hand practices, most often:

- Offering to assist homeowners facing foreclosure through buying their home and then selling it back to them, usually at rates and on terms guaranteed to result in default and loss of all equity

- Protecting assets from creditors by encumbering the equity with loans from friendly creditors, such as relatives, who won't foreclose if you miss a few payments

equity yield rate The rate of return on the equity portion of an investment, taking into account the periodic cash flow after debt service and before taxes, plus proceeds from a sale.

erosion The slow wearing away by natural forces such as water and wind.

errors and omissions (E&O) insurance Insurance that protects against malpractice. Especially when working with a buyer's broker, who has a high degree of responsibility to anticipate problems and warn the client, one should ask for proof of E&O insurance before hiring a real estate professional.

escalation clause A clause in any of a wide variety of contractual or real property arrangements that allows one party to increase the price upon the happening of certain specified events. Long-term leases often have rent increases at 3- to 5-year intervals, with the adjustment being a certain stated amount, a percentage of then-current market rents, or an increase based on some index with the first year of the lease representing the benchmark and against which the index is measured.

> **Example:** *The parties agree that rent will increase in 5 years in the same proportion as the consumer price index (CPI) in 5 years bears to the current consumer price index. If the rent today is $4,000 per month and the CPI is 179, and in 5 years the CPI is 192, then the new rent is calculated at follows:*
>
> *192 ÷ 179 = 1.0726%*
>
> *$4,000 × 1.0726% = $4,290.40 per month*

Other escalation clauses are used to increase the interest rate in a loan when there has been a default and to increase rent when a tenant remains in possession after expiration of its term.

escalator clause See *escalation clause*.

escalator mortgage See *adjustable-rate mortgage*.

escape clause A clause that allows one party or the other to cancel a contract without penalty upon the happening of certain described events or conditions. The most common ones in real estate are the ability to cancel a purchase contract if the buyer cannot secure acceptable financing or if the buyer cannot sell his or her own home.

escarpment A long, steep face of rock or dirt.

escheat The reversion of property to the state because of the lack of anyone to inherit it.

escrow The process in which money and/or documents are held in trust by a disinterested third party who will consummate the instructions of the parties as expressed in their contracts. The third party is called the escrow agent. The escrow agreement usually contains a clause providing that if the parties disagree about something and are unable to resolve their differences, the escrow company will pay all money on hand into court in an action called an interpleader, name the disputing parties as defendants, disclaim any interest of its own in the property except for reimbursement for costs and expenses of bringing the interpleader action, and then let the parties battle it out in court. This effectively takes the escrow company out of the middle of any disputes and avoids liability on its part.

escrow account (1) A separate bank account for keeping money that is the property of others. Attorneys and real estate agents are required to keep escrow accounts for client money and not commingle client money with their own funds. (2) An accounting entry by a mortgage lender showing the amount on hand from the borrower's monthly budget loan payments to pay real estate taxes and insurance when those bills become due.

escrow agent A person or firm who agrees to hold funds for others and disburse them according to lawful instructions.

escrow analysis With a budget loan, the mortgage lender's annual analysis of funds collected each month from the borrower for insurance and real estate taxes, the amount actually expended for those bills at year end, and the amount the monthly payments must increase or possibly decrease in the next year to provide the appropriate level of funds to pay the next year's bills.

escrow closing See *closing*.

escrow payment That portion of the monthly payments in a budget loan that will be accumulated by the lender and then used to pay insurance and real estate taxes.

estate (1) All the property of a person who has died. (2) The degree, quantity, nature, and extent of legal interest that a person has in real and personal property. The most common estates are

1. In fee simple absolute. This is the greatest degree of ownership possible, in which a person owns all rights to a property and may freely dispose of them to purchasers or heirs.
2. At sufferance. In this type of estate a tenant continues to retain possession past the expiration of the lease.
3. At will. A tenant is put into possession by the owner of land, but the possession may be terminated at the will of the owner.
4. By the entirety. This is a joint estate held by two persons who are married to each other at the time of creation and which cannot be destroyed by either one of them or by the creditors of the other. In some states, a divorce court may not even divide the property, but the parties must agree on its disposition.
5. For life. In this estate, someone has an interest in property that lasts only as long as some life named or described in the granting instrument.
6. For years. This is typically a lease.
7. In remainder. In this type of estate a person takes property after the death of a person with a defining life in a life estate.
8. In reversion. That portion of an estate that remains in a grantor who transfers less than full ownership of a property. For example, if the owner of property transfers a life estate

to another, the owner retains an estate in reversion and will regain full ownership when the life tenancy ends. If that future interest were also transferred to another, it would be called a remainder, but since it is retained by the grantor it is called a reversion.

9. In severalty. This term can be confusing, because it means the opposite of our common understanding of the word "several." An estate in severalty is an estate owned by one person, alone.

estate tax A tax imposed on the value of the estate of a decedent. The conceptual justification is premised on a peculiarly American notion that it is undesirable for generations to accumulate wealth by passing it to each other in a manner similar to that of English aristocracy and that each generation should make its own mark and earn its own way. As a result, it is considered advantageous to remove wealth from each generation by way of estate taxes and use the money for the common good. For details, see Publication 554, "Survivors, Executors and Administrators" available at the IRS Web site, www.irs.gov.

estoppel A doctrine that stops one from denying facts or taking a course of action because it would be unfair under the circumstances. It may be because someone else relied on former statements regarding the facts or because someone else relied upon a situation allowed to exist by a party, so that the party cannot now be allowed to change that situation. The concept commonly arises in three situations:

1. Before the sale of an income-producing property, the tenants sign estoppel certificates acknowledging they have no claims against the landlord, no defenses to any of the terms or conditions of their lease, and no outside or "side" agreements varying the terms of the lease. After the sale, the tenant cannot claim otherwise, even if all parties agree that there has been a wrong done to the tenant by the prior landlord and the tenant would otherwise be able to cancel the lease if it were not for the estoppel certificate.
2. A subdivision with restrictive covenants grows lax in the enforcement of them and permits many violations over the years regarding, for example, parking boats and motor homes in driveways. If one buys a home in the subdivision and keeps a motor home in the driveway, the principle of estoppel will prevent the homeowners association from suddenly deciding to enforce that particular covenant.
3. A government employee tells someone one thing, and it later turns out to be wrong. The citizen has already taken action on the incorrect information. In most circumstances, courts will not allow estoppel against a government or government agency.

estoppel by deed A legal concept that comes into play when someone deeds real property to another, even though not having title at the time—usually due to a technical defect. When the sellers later gain legal title through clearing up the technical defect or otherwise, they cannot claim the property as their own because of estoppel by deed.

estoppel certificate See *estoppel*.

estovers The right or privilege of a tenant to take so much from the land as is necessary for support, such as the right to cut timber for heating.

et con From the Latin et conjunx, meaning "and husband." Used in deeds and deed records. Also called et vir.

et ux From the Latin et uxor, meaning "and wife." Used in deeds and deed records. Usage arose in the 1300s in England, when wives had no legal identity and therefore were not named in legal instruments. Despite the dramatic change in circumstances today, one still sees deed references to "John Jones et ux…"

et vir Latin for "and man," it is often used interchangeably with "et con" to mean "and husband."

evaluation A study of potential property uses, but not value.

eviction The process of denying possession to a tenant. It may be one of the following:

- Actual, as when the landlord obtains a court order that the tenant vacate the premises or have his or her goods and person removed by law enforcement officials.
- Constructive, as when the landlord allows a condition to continue that renders the premises, or a part of the premises, incapable of possession and enjoyment.

evidence of title Proof that one has title to property; may be deeds, court orders, probate estate proceedings, or Torrens certificates.

examination of title The process of investigating title to real estate, usually confined to recent records.

exception (1) Estates or described lands specifically spelled out in a deed as not passing to the grantee. (2) Liens and claims specifically excluded from the coverage of a title insurance policy. (3) Liens and claims specifically excluded from a contract of sale.

excess land Land taken by eminent domain in a condemnation proceeding, but which is greater than the amount actually needed for the project in mind. A government may condemn excess land because the portion remaining after the amount actually needed may be rendered completely useless. In such a circumstance, the authority would have to pay for the condemned land and pay damages for the loss in value of the remaining land. It may be cheaper to simply take all the land and then attempt to sell the excess, especially if there are several excess parcels that are contiguous to each other.

excess rent A contract rent that is in excess of current market rents. In a bankruptcy proceeding, a bankrupt tenant may renegotiate a lease in order to remove the excess rent.

exchange Parties may exchange like-kind properties and not pay any income taxes at the time of the exchange but, instead, defer them until the later sale of the exchanged property. See *1031 exchange*.

exclusionary zoning Zoning that has the effect of excluding persons protected by law from discrimination.

exclusive agency Same as exclusive agency listing.

exclusive agency listing A relationship with a seller of real estate in which a broker has the exclusive right to list the property and receive a commission except that if the owner sells the property to one not obtained by the listing agent or its advertising and marketing efforts, then the owner need not pay a commission. Contrast with *exclusive right to sell listing*.

exclusive right to sell listing A relationship with a seller of real estate in which a broker has the exclusive right to list and to sell the property, so that even if the owner sells to his or her child, with no involvement whatsoever from the broker, the broker is still entitled to a commission. This is done to avoid disputes over who procured a particular buyer. Sellers who wish to exclude certain persons from the effect of the agreement should describe them, such as "except for the following named potential buyers …" or "except for sales to family members related in the third degree… ." Contrast with *exclusive agency listing*.

exculpatory clause (1) A clause in a mortgage that allows the borrower to surrender the property to a lender without any further personal liability for a deficiency. (2) A clause in a trust instrument or in a will excusing the trustee or executor from liability when powers are exercised in error but in good faith.

execute To complete, as by signing a contract or signing and delivering a deed.

executed contract A contract that has been fully performed by all sides; contrast with *executory contract*.

executive suite An older term for a business center, a business arrangement granting no leasehold interests but allowing persons to enjoy the use of office space with a sharing of amenities such as conference rooms, lobby, phone system, copiers, and network facilities, as well as a sharing of clerical, support help, and facilities and personnel management.

executor One named in a will to fulfill the wishes of a decedent regarding the disposition of assets. Today, the word refers to both males and females serving in that capacity. At one time, executor referred only to males, and the female was called an executrix.

executory contract A contract under which one or more parties has not yet completed their performance.

executory interest A general term used to describe all future interests other than reversions or remainders; an interest that will shift from one owner to another or spring into being upon the happening of some event in the future.

executrix An older term meaning a female executor.

exemplary damages The same thing as punitive damages. See *damages*.

expansion option A right granted by the landlord to the tenant where the tenant has the option to add more space to the premises according to the terms of the option, which may contain restrictions as to the time, proximity, and rental rate, or the restriction that the option is available only if another named or described tenant fails to exercise its expansion option first.

expense ratio A comparison of the operating expenses to potential gross income of a property in order to obtain a ratio that can be compared to other similar properties. In this manner, the owner may receive advance warning that rents are below market or expenses are too high. In addition, a potential buyer familiar with the ratios for similar properties may be forewarned if there is an unusually small ratio in a property under consideration. This could be the result of a seller not spending the proper sums to maintain and manage property, a seller performing its own maintenance without booking any expenses that might be incurred after the buyer takes over the property, or the seller omitting expenses. Purchasers interested in buying self-managed and maintained property will generally estimate a reasonable maintenance and management expense, and then reevaluate the estimated net income and the asking price in light of that information.

expenses The cost of maintaining property or generating income.

expense stop In a commercial lease, a provision that annual rent escalations due to increasing building operating expenses will be stopped, or capped, at a certain amount of increase per year or over the lifetime of the lease.

Experian One of the three major credit reporting agencies. The other two are TransUnion and Equifax. The Web site for Experian is at www.experian.com. See also *Fair Credit Reporting Act*.

expire To end; to die.

exposure (1) In finance, the amount that one may lose in an investment; the potential loss, which could be the capital invested plus any personal liability on loans in excess of the value of the property securing the loans. (2) In the market, the process of making a property known to the marketplace as available for sale or lease. (3) Physically, the direction of an improvement; for example, "The southern exposure of the house had all the best views."

express condition See *condition*.

express notice The actual delivery of information to a party. Contrast with *constructive notice* and *implied notice*.

express warranty Specific promises made by a party regarding the quality of something sold and the remedial actions that will be taken if the property sold does not conform with the promises.

expropriation The seizure of private property for public use by condemnation.

ex-situ Off-site; most commonly used in the context of ex-situ remediation of contaminated soil, which means removing the soil and replacing it with clean soil.

extended coverage Insurance that covers specific risks not covered in a normal policy.

extender clause A clause in a listing agreement that says the broker may be entitled to a commission after the expiration of the listing period if a buyer originally procured during the period later buys the property within a certain time span afterward, usually 6 months. When hiring a new broker after no success with an earlier one, an owner should always disclose a copy of the former contract and advise both brokers, in writing, that if there are any disputes as to claims for commission, the brokers must share rather than the owner being liable for double commission payments.

extension An agreement to defer the time for doing an act or for termination of a lease.

extension option An agreed-upon continuation of occupancy under the same conditions, as opposed to a renewal, which implies new terms or conditions. In a lease, it is a right granted by the landlord to the tenant whereby the tenant has the option to extend the lease for an additional period.

exterior insulation and finish system A cement-based synthetic material that resembles stucco and is used in the same way. It is usually abbreviated as EIFS. One widely known manufacturer is Dryvit.

external obsolescence Same as *economic obsolescence*.

eye appeal See *curb appeal*.

F

facade The front of a building; what one sees from the street. Sometimes a building is constructed of metal, but the facade is brick or some other attractive treatment. Zoning regulations, subdivision restrictions, and historic district requirements may specify particular building facades.

facade easement Typically, rights granted to historic groups so they can maintain control over the appearance of the exterior of a building.

face interest rate The interest rate shown on the face of a promissory note and used to calculate the monthly payments on a loan. In order to help borrowers compare apples to apples when shopping for a lender, the federal Truth in Lending Act requires lenders to reveal an annual percentage rate which includes the "face interest rate" plus the value of some closing costs and prepaid expenses.

face value The value of an instrument (promissory note, bond, stock, etc.) as stated on the face of the instrument. The face value does not always equal the market value.

> **Example:** *A 5-year-old mortgage note with a face value of $100,000 and an amortization term of 20 years at 2.8 percent interest is worth far less than $100,000 for two reasons: (1) The principal balance is now a little under $80,000. (2) Why would anyone invest even $80,000 to earn 2.8 percent interest when he or she can get better returns in the marketplace? For both reasons, an investor would pay much less than the $100,000 face value to buy the mortgage.*

facilitator Someone who helps out in a real estate transaction but owes no responsibilities to the buyer, the seller, the lender, or the borrower. A facilitator in a real estate transaction might contact a home inspector, arrange for a survey, assist with removing underwriting problems on a mortgage loan, and explain the computations for the buyers' and sellers' costs at closing. When working with people in a real estate or mortgage loan transaction, it is extremely important to ask them to disclose, in writing, their exact role and their responsibilities to you. Someone you might assume to be your agent, with the responsibility to work for your best interests, might actually be only a facilitator, with little or no responsibilities.

facilities management Taking care of what's called the physical plant of a property—repairs, maintenance, security, janitorial, groundskeeping, etc. Formerly this was considered a janitorial-type career choice. Today, with rapidly changing technology, environmental concerns, government regulations, terror-related security issues, and other such matters, a career in facilities management is seen as a white collar, high-dollar choice. For more information go to the FMLink Group Web site at www.fmlink.com.

factory-built home Generally, a home that is largely built someplace else and then shipped to a site for completion and/or simple installation. Mobile homes (also called manufactured housing) generally come to mind first, although the term also includes modular homes, panelized homes, and log-cabin kit homes.

Fair Credit Reporting Act A federal law intended to remedy abuses by credit reporting agencies. The law is enforced by the Federal Trade Commission, which maintains information on its Web site, www.ftc.gov. Generally, the law prohibits reporting erroneous or outdated credit information. The following adverse information cannot be reported:

- Civil suits, civil judgments, or arrest records older than 10 years or the statute of limitations, whichever is longer;
- Paid tax liens older than 7 years. (Note: Credit reporting bureaus and the Federal Trade Commission take the position that unpaid tax liens can be reported forever. This seems to be against the plain language of the statute.)
- Accounts placed for collection more than 7 years ago. When in doubt, the FTC assumes that an account will be placed for collection 180 days after it first becomes delinquent.
- Anything else, other than crimes, older than 7 years.

An important exception allows reporting of older information if the consumer is applying for a loan of $150,000 or more, life insurance with a face value of $150,000 or more, or a job with an annual salary of $75,000 or more.

Consumers may obtain one free credit report per year from each of the three major credit reporting agencies—Equifax, TransUnion, and Experian—by going to their centralized site of www.annualcreditreport.com.

(Beware of firms promising to “clean up your credit” for a fee. Many times, they employ illegal tactics that involve you committing fraud or perjury. The Federal Trade Commission has been very aggressive in suing such services.)

Fair Debt Collection Practices Act A federal law designed to curb abuses in the debt collection industry. The law applies to debt collectors, who are defined as persons or companies who collect debts for another. If you owe money to Smith’s Marina and Mr. Smith himself or one of his employees contacts you to collect the money owed, that person is not a debt collector under the Act because they are trying to collect money due to themselves, not money due to a third party.

Generally speaking, collectors cannot call you before 8 a.m. or after 9 p.m. They can’t threaten you with arrest, bodily harm, or public exposure as a “deadbeat.” They can’t imply they are connected with law enforcement. Collectors cannot harass you with repeated phone calls on the same day. They can’t call you at work if you tell them you are not allowed to receive such calls at work.

Consumers may sue and collect damages and attorneys' fees for violations of the Fair Debt Collection Practices Act. (It may be found at 15 USC §1601 and subsequent sections.) You must file suit within one year of the violation.

Fair Housing Act A federal law originally passed in 1968. The law prohibits discrimination by landlords, real estate agents, municipalities, lenders, and homeowners' insurance companies, if the discriminatory practices make housing unavailable to people because of race or color, religion, sex, national origin, family status, or disability. Discrimination includes such things as steering, redlining, and imposing greater requirements on some groups than on others. Limited accessibility that makes housing practically unavailable for persons with disabilities is a form of discrimination. Housing providers may not unreasonably limit the number of people living in a unit or restrict families to only certain areas of a complex. It is, however, legal to limit a project to people over 55, as allowed by the Housing for Older Persons Act of 1995. The many faces of discrimination are varied and sometimes subtle. It is recommended that all persons involved in real estate become thoroughly familiar with the law.

The Department of Justice may file civil or criminal actions for violations. Individuals who have been discriminated against may file a complaint with the Department of Housing and Urban Development or file suit in state or federal court. There is currently a thriving litigation industry in consumer protection groups using individuals to attempt obtaining housing, lending, or insurance and then suing under the Act when they encounter discrimination. (More information may be found at the Web site for the Department of Housing and Urban Development, www.hud.gov/offices/fheo/index.cfm, and at 42 USC §3601 and subsequent sections.)

Fair Isaac Company (FICO) score A credit score, based on the name of the company that wrote the software that calculates the scores.

fair market value The amount that a willing buyer would pay a willing seller for property after reasonable exposure to the marketplace.

false advertising Advertising that contains blatantly false or misleading statements, whether intentional or not. False advertising may be grounds for rescission, or cancellation, of a contract, and it may also provide the basis for an award of compensatory and punitive damages.

FAMC See *Federal Agricultural Mortgage Corporation*.

familial status Under the Fair Housing Act, a protected class of people who live in a household with one or more persons under the age of 18 years and are the parent, legal guardian, or custodial adult for the minor. The concept includes pregnant women and people attempting to gain custody of a minor. Except for elderly housing, one may not discriminate against someone on the basis of familial status.

family Traditionally, people who are related by blood or marriage. The term can mean many different things depending on the circumstances. Most statutes have a section devoted to "definitions" that will tell you the intended definition of words used in the law. For example, the concept of what constitutes a family may be important in zoning cases for single-family housing or apartment restrictions against non-family members living in the apartment with the tenant.

family limited partnership (FLP) A special type of limited partnership recognized by some states as an estate planning tool. A donor establishes a family limited partnership and then transfers into it property expected to appreciate in value over the years. The donor then makes gifts of small percentages of the partnership to children or other family members. The gifts are small enough to escape gift taxes and may be doubled if the donor makes the first gift to the spouse, and then each of them makes gifts each year. As the property grows in value, the appreciation belongs to the person receiving the gifted shares and so is not in the donor's estate at death.

Fannie Mae A popular name for Federal National Mortgage Association.

Farm and Land Institute Now known as the REALTORS® Land Institute.

farm area A specific geographic area or condominium complex receiving intense marketing efforts from a real estate agent in order to obtain listings. The agent specializes in the area, learning everything there is to know. Over time, communities will always have agents identified with particular parts of town, such as "Myra the lake lady" or "Lyman the land man."

farm assets All the assets of a ranch or farm, including the residence, outbuildings, barns, irrigation systems, trees, and fencing. Farm assets receive special treatment under the Internal Revenue Code if there is sale, exchange, or lease. Farmers are also exempt from the requirements to pay quarterly estimated taxes. (See Publication 225, "Farmer's Tax Guide" at the IRS Web site, www.irs.gov.)

Farm Credit Administration (FCA) An independent agency (www.fca.gov) responsible for regulating and examining banks in the Farm Credit System, including Farmer Mac. It is funded through assessments made against the FCS institutions.

Farm Credit Council A federated trade association representing the Farm Credit System.

Farm Credit System The oldest government-sponsored enterprise (GSE) (www.farmcredit-ffcb.com) in the country, created in 1916. It is a nationwide network of borrower-owned lending institutions and affiliated service entities that makes loans to agricultural and rural borrowers. The members do not take deposits. The funds for loans are obtained through the issuance of Farm Credit debt securities on a worldwide basis in the domestic and global capital markets.

Farmer Mac A nickname for the Federal Agricultural Mortgage Corporation (FAMC).

Farmers Home Administration (FmHA) A federal agency that formerly operated under the United States Department of Agriculture (USDA). The Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 replaced FmHA with USDA Rural Development.

fashion/specialty centers Shopping centers devoted to retail and dining establishments attractive to a higher-end, fashion-oriented concept. They usually contain 80,000 to 250,000 square feet of space on 5 to 25 acres, with a primary trade area of 5 to 15 miles.

fastrack construction Construction that begins before all plans and specifications have been completed. For example, the builder may have full architectural and structural engineering drawings sufficient to pour footings and a concrete pad, before the electrical plans have been completed.

FCA See *Farm Credit Administration*.

FDIC See *Federal Deposit Insurance Corporation*.

feasibility study An analysis of the marketplace to determine if it is economically practical and desirable to develop a particular project. Contrast with a market analysis, which merely identifies whether a defined market or trade area desires what you propose to build. A market study determines demand for the real estate development; a feasibility study determines whether that demand is willing to pay what the project will cost, plus a profit.

> **Example:** *The demand for first-class office space in downtown Elm City exceeds the available space. There are no vacancies, and potential tenants must take space in the suburbs or settle for less desirable space downtown. The market analysis determines that a market exists for a new midrise office building. The feasibility study then analyzes all acquisition and construction costs, the length of time until a new building would be at break-even occupancy, the cost of funds for construction financing, and the expenses of operating such a building. According to the feasibility study, the building would have to command rents in the range of $28 to $30 per square foot per year in order to be a viable project. Current market rents downtown for similar space range between $19 and $23 per square foot per year.*

This constitutes the feasibility study—what will it cost, what must I charge, what will the market pay? The portion of the study that asks "What will the market pay" is the portion with the most risk, the most in need of salesmanship when one is talking to lenders and investors, and the truest test of a seasoned developer with good instincts. In the preceding example, the market may very well respond positively to a new building with rental rates significantly higher than anything else downtown. On the other hand, it might not. One has to choose, in the end, after all the analysis has been completed.

Federal Agricultural Mortgage Corporation (FAMC) Commonly called Farmer Mac (www.farmermac.com), it is one of the system entities in the Farm Credit System. Its purpose is to attract new capital for the financing of agricultural real estate and to provide liquidity to agricultural lenders.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 Federal legislation passed in order to streamline and modernize the Department of Agriculture.

Federal Deposit Insurance Corporation (FDIC) An independent agency (www.fdic.gov) created by Congress in 1933. It supervises banks, insures deposits up to $100,000 per depositor per institution, and acts as a receiver and liquidator for failed banks.

Federal Emergency Management Agency (FEMA) Formerly an independent federal agency that became part of the Department of Homeland Security on March 1, 2003. FEMA's mission statement is to "lead the effort to prepare the nation for all hazards and effectively manage federal response and recovery efforts following any national incident." FEMA (www.fema.gov) also initiates proactive mitigation activities, trains first responders, and manages the National Flood Insurance Program.

Federal Financial Institutions Examination Council A federal interagency body (www.ffiec.gov) that establishes uniform standards and reporting requirements for the examination and auditing of financial institutions supervised by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision.

Federal Home Loan Banks (FHLBanks) The largest source of residential mortgage and community development credit in the United States. This group consists of a regional cooperative of 12 FHLBanks, each with its own president and board of directors. Its primary business consists of FHLBank Advances, which are low-cost loans made to member institutions. This gives those members the liquidity to make mortgage loans. The FHLBanks (www.fhlbanks.com) regenerate their own liquidity by selling debt consisting of consolidated bonds with maturities of one year or more, and consolidated discount notes which mature within 360 days.

Federal Home Loan Mortgage Corporation A stockholder-owned corporation chartered by Congress in 1970 to assist home mortgage lenders with a steady flow of money. Called Freddie Mac (www.freddiemac.com) for short, it buys home mortgages from loan originators such as local financial institutions and then sells mortgage backed securities and debt securities. In order to realize one of its goals, to stabilize the mortgage industry, Freddie Mac has transformed the industry by standardizing mortgage documents, introducing automated underwriting, creating the market for conventional mortgage backed securities, and leading the fight against unfair and predatory lending practices. Its primary competitor is Fannie Mae; both are regulated by the Office of Federal Housing Enterprise Oversight in HUD.

Federal Housing Administration (FHA) Created by Congress in 1934 and later added to the Department of Housing and Urban Development's (HUD) Office of Housing in 1965. The FHA (www.fha.gov) says it is the only government agency that is entirely self-supporting and receives no taxpayer funds at all. It provides mortgage insurance on loans made by FHA-approved lenders, making those loans risk-free for the originators.

Federal Housing Finance Board (FHFB) Regulates the 12 Federal Home Loan Banks.

Federal Insurance Administration (FIA) A federal agency that administers several insurance programs, including flood insurance.

Federal Land Bank The former name for institutions established by Congress in 1917 in order to provide long-term mortgage credit to farmers and ranchers, and later to rural home buyers. The Federal Land Banks merged with the Federal Intermediate Credit Banks after the Agricultural Credit Act of 1987. It is now known as a Farm Credit Bank.

federally chartered banks Financial institutions authorized and regulated by the federal government rather than the state government. They have the word "national" in their name, or the initials

"N.A." at the end. Supervision is by the Office of the Comptroller of the Currency (OCC) at www.occ.treas.gov.

federally related transaction (FRT) FDIC regulations define the term as "any real estate-related financial transaction entered into on or after August 9, 1990, that the Board or any regulated institution engages in, contracts for, or regulates." FDIC regulations require an appraiser for any FRT except those under $250,000 and other narrowly defined exceptions.

Federal National Mortgage Association (FNMA) Popularly known as Fannie Mae. A former government agency that was privatized in 1968, Fannie Mae's mandate is to increase the availability and affordability of homeownership for low-, moderate- and middle-income Americans. It does this by purchasing mortgages in the secondary market and then selling and insuring securities comprised of packages of mortgages. These are usually single-class mortgage backed securities known as Fannie Mae MBS. Contrast with multiclass mortgage backed securities described under *real estate mortgage investment conduit* (REMIC). The association's Web site is www.fanniemae.com; shares in the company are traded on the New York Stock Exchange as FNM.

Federal Reserve System Often called "the Fed," it is the central bank of the United States, created in 1913. It regulates credit through the interest rates it charges for short-term loans to financial institutions, supervises and regulates banking institutions, and provides advisory services to the government. Funding comes from interest on investments, fees for services to depository institutions, and interest on loans. The public usually comes into contact with the Fed in two ways: When the Federal Reserve chairman announces interest rate changes for loans to member financial institutions, almost all financial institutions change their interest rates within days afterward. In this way, the Fed controls the cost of credit to consumers. Additionally, it provides a central clearinghouse for checks drawn on different banks across the nation, making it possible for your bank in your home town to give you credit for a check drawn on another bank on the other side of the country.

federal rule for condemnations A method of appraising property taken by the federal government via condemnation under its rights of eminent domain. It is employed when less than an entire parcel is taken. The entire parcel is given a value as it would be before condemnation. Then the parcel to be taken is subtracted, and the remaining parcel appraised. The difference is the condemnation award. This differs from the method used by most states, which value the property condemned and then award damages for the decrease in value suffered by any leftover property. See *before-and-after rule*.

Federal Savings and Loan Insurance Corporation (FSLIC) A former quasi-governmental agency that provided insurance for deposits at savings and loan institutions. FSLIC (pronounced fizz-lick) went bankrupt in the 1980s banking crisis, and was replaced by the Savings Association Insurance Fund, administered by the FDIC.

federal tax lien A lien or encumbrance upon all of a taxpayer's real property located in the county where the lien is filed. Tax liens may be for unpaid income taxes, or for the 100 percent penalty assessed against controlling shareholders when their small corporations do not pay withholding taxes for employees. Lenders who foreclose on real estate must send notices to the IRS regarding impending foreclosures, or the property will still be subject to the tax lien after the foreclosure, even if the lien was filed after the mortgage and would ordinarily be destroyed by the foreclosure. (For more information, go to the IRS Web site, www.irs.gov, and search on "IRC 7425 notice.")

Federal Trade Commission (FTC) Created in 1914, the FTC (www.ftc.gov) was the successor to the old Bureau of Corporations. It was formed in response to widespread concerns about monopolies and their impact on consumers.

Today, it is comprised of three bureaus:

1. Bureau of Consumer Protection. Created to protect consumers from unfair, deceptive, or fraudulent practices. It enforces a variety of consumer protection laws enacted by Congress. It also maintains the consolidated consumer Web site (www.consumer.gov) with information and links to over 170 government agencies.
2. Bureau of Competition. The antitrust arm.
3. Bureau of Economics. Helps the FTC evaluate the economic impact of its various policies.

fee appraiser One who furnishes appraisals of real property for a fee. Contrast with review appraiser, who is typically an employee of a financial institution or institutional investor and who reviews the work of fee appraisers.

feeder road See *arterial street*.

fee simple The maximum possible interest (estate) one can possess in real property is the fee simple absolute. It is unlimited as to duration, transferability, and descendability to heirs. Lesser types of fee simple estates include the fee simple defeasible and the fee simple determinable, both of which may result in loss of the property upon the happening of some event in the future.

fee simple defeasible An interest in real property that may be defeated upon the happening of a certain described event. In other words, someone must take an action in order for the estate to come to an end.

> **Example:** *"I grant Blackacre to First Methodist Church 'so long as' (or 'while' or 'during the period') the property is used for religious services." If the property ceases to be used for religious purposes, then the grantor or the grantor's heirs have a reasonable amount of time to declare their rights and retake possession of the property. If they do nothing, they eventually lose their rights and the property stays with First Methodist Church, to do as it chooses with it. Contrast with* fee simple determinable, *which is an automatic termination.*

fee simple determinable An interest in real property that will automatically terminate upon the happening of a certain described event.

> **Example:** *"I grant Blackacre to First Methodist Church 'for so long as it is used as' (or 'but only if the property is used for') a church." When the property ceases being used for the purpose granted, then title automatically reverts back to the grantor or the grantor's heirs. It is said that the grantor retains a possibility of reverter. Contrast with* fee simple defeasible.

fee tail An ancient form of ownership and restriction on land, in which property could pass only to members of the direct male line of a family, and when a time came when there were no direct male members to inherit, the property reverted to the state.

felony A crime that carries the possibility of a sentence in excess of one year. Violation of some real estate laws is classified as a felony.

FEMA See *Federal Emergency Management Agency*.

feng shui The art and science of placing buildings and specifying the use of components, finishes, and furniture in such a manner as to create harmony and balance.

feudal system An ancient system of land ownership. Under old English common law, the king owned all lands. All other people were mere tenants, who enjoyed possession solely by virtue of the goodwill of the overlord above them. By the seventeenth century the system was replaced by the allodial system we know today.

FF&E See *furniture, fixtures, and equipment*.

FHA See *Federal Housing Authority*.

FHA approved An activity, development, lender, or construction method which meets all requirements of the FHA and will qualify for FHA-insured mortgage loans.

FHA insured A single-family or multifamily mortgage loan that is insured by the Federal Housing Authority. If the borrower defaults, the FHA will either pay the lender the insurance proceeds, up to the balance remaining on the loan after foreclosure, or it will pay the loan in full and take an assignment of the collateral.

FHFB See *Federal Housing Finance Board*.

FIA See *Federal Insurance Administration*.

fiber to the curb An important amenity in a development; the existence of fiber-optic cable from the phone company's central office to the edge of the development, so that all properties within may make use of advanced telecommunications services.

fictitious company name A trade name or assumed name for a company, rather than the actual legal name of the person or entity that owns the business. Many states require fictitious party filings so that consumers and others may determine the true ownership of a business simply by knowing the trade name.

fidelity bond A special insurance policy that covers losses caused by dishonest employees. Property management companies and others with employees who handle money belonging to clients should generally obtain fidelity bonds. Also called a surety bond.

fiduciary A person who enjoys a relationship of trust or confidence with respect to another such that the law will impose greater than normal responsibilities on the fiduciary for honesty, integrity, candor, and scrupulous good faith even if it means sacrificing the interests of the fiduciary. Typical fiduciaries include attorneys, real estate agents representing principals, trustees, and guardians. Because of the fiduciary relationship between an agent and principal, it is difficult to understand the concept of dual agency, in which the broker may represent both the buyer and seller. A seller's fiduciary must keep all the client's information confidential, not volunteer anything unless absolutely required by law, and attempt to gain the highest possible price for the property. A buyer's fiduciary must ferret out all secrets, volunteer all information regarding anything at all that might affect property values, recommend the most thorough home inspectors, and attempt to obtain the lowest possible price for a property. These positions are extremely difficult to reconcile in one person.

fiduciary obligations Very high responsibilities of care, concern, representation, and confidentiality owed by one in a special relationship to another. An agent owes fiduciary obligations to the principal, who is also called the client.

field fit The practice of taking measurements for building components as an improvement is undergoing construction, rather than relying on precise written plans and specifications. Sometimes small amounts of field fitting are necessary, as when tolerances can vary by fractions of an inch. Other times, although the practice is widespread and commonplace, it is not recommended.

file To place a document in the public records. All such documents are time and date stamped when received; this is important because the priority of deeds and of liens is usually on a race-to-the-courthouse, first-to-file basis. In many states, if a judgment is recorded against a seller only minutes before a deed to the buyer is recorded, then the buyer's new property is subject to the lien, which must be paid or the judgment creditor may execute and take the property and sell it for satisfaction of the debt.

filled land An area where the grade—the level of the land—has been raised, preferably by depositing clay, soil, rock, and gravel and then compacting the fill at regular intervals as the grade is raised. Less ideal, but more common in areas with little regulatory oversight, is the practice of dumping tree stumps and other vegetation, covering them with 6 feet or so of clay, and then compacting only the top 6 feet. The property will pass most compaction studies, which bore down only 6 feet. In time, however, the vegetation will rot, the land will settle, and the owner will see potholes and foundation cracks.

final injunction A court order entered after trial on all issues, directing that the losing party take some action or stop doing something. If the losing party disputes the decision, it may appeal. Contrast with a temporary restraining order, which is a court order intended to be effective for a very short time until there can be a hearing. Contrast also with a preliminary injunction, which is a court order intended to be effective only until there can be a full trial, usually several years later.

finance charge The total of all direct and indirect costs associated with obtaining credit.

finance fee A charge by a mortgage broker to cover costs and expenses associated with placing a loan. With VA and FHA loans, the fee is limited to 1 percent of the amount financed. Other loans vary between one-half of 1 percent and 3 percent depending on the competition to obtain loans, credit risk, and other such business factors. The fee is generally negotiable. See *origination fees*.

financial institution An organization that obtains money from deposits and earns money from loans.

Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) (pronounced "fie-ree-ah") Federal legislation passed in 1989 in response to the banking and savings and loan crisis, the FDIC bailout, and the bankruptcy of the Federal Savings and Loan Insurance Corporation (FSLIC). It reorganized much of the oversight and regulatory framework for financial institutions and created the Resolution Trust Corporation (now defunct) to receive and liquidate assets from failed financial institutions.

financial management rate of return (FMRR) A method of evaluating the performance of a real estate investment, FMRR is a modified version of the internal rate of return tool. FMRR uses two different rates for its calculations: (1) the cost of capital rate to discount future negative cash flows back to the present (in other words, what would it cost you to borrow the money to cover losses in future years?) and (2) a specified reinvestment rate for compounding future positive cash flows to the end of the projection period (in other words, what if you took your profits and reinvested them at a certain rate, how would they grow?)

financial privacy rules See *Gramm-Leach-Bliley Act*.

financial purchase A buying decision that involves insurance or other financial products, such as a home mortgage.

financial statement A semi-itemized list of the assets and liabilities of a person or entity as of a point in time, and the revenues and expenses over a representative month or over a period of time such as one year. Do not confuse with *financing statement*.

financing Borrowing money to buy property. See *leverage*.

financing statement A document filed in the public records; gives notice that a secured party claims a security interest in certain described goods and other personal property owned by a named debtor. It is also called a UCC-1 after the form provided by the Uniform Commercial Code. The purpose of the statement is to put other creditors, or purchasers, on notice that the security interest exists and will remain on the property even if sold and even if another creditor loans money against the same property. The financing statement does not give the security interest; it merely provides notice of the existence of a security agreement. If a creditor fails to obtain a signed security agreement, the financing statement will be useless. (Do not confuse with *financial statement*.)

finder's fee A fee for finding someone to buy, sell, or rent real estate. It is illegal in most states unless the finder is a licensed real estate broker or agent. There is some question about whether existing tenants may receive small gifts or rent credits for referring new tenants. The states that allow this limit the compensation or gift to something minimal.

finish-out allowance See *tenant improvement allowance*.

fire insurance A type of property insurance covering losses caused by fire and by damage caused in putting out the fire. Premiums will often depend on proximity to a fire station (within 5 miles is best), the rating of the fire department (all volunteer personnel with minimum equipment up to full-time personnel with all equipment), proximity to a fire hydrant, and method of construction of the property.

fireproof Having all surfaces covered with a noncombustible material such as concrete or brick. Contrast with *fire resistant*.

fire resistant Able to withstand exposure to a fire of a specified intensity for a specified period of time, usually 1, 2, or 4 hours. Contrast with *fireproof*.

fire sprinkler system A system for the delivery of water to locations registering a certain heat and to surrounding areas. Local building codes sometimes change the requirements for fire sprinkler systems, requiring larger sprinkler heads than before. Even if a property has a sprinkler system in place, you will need to check the pressure, the size of the heads, and any other matters required by local law in order to ensure that the system will be in compliance.

fire-stop Obstructions placed in open areas above a ceiling in order to stop a fire that could otherwise easily spread to all parts of a building.

fire wall A fire-resistant wall required by local health and safety codes. Depending on the particular code adopted, a property owner may need to erect fire walls between every 3,000 square feet of space, between spaces rented by separate tenants or owned by separate condo owners, and along exterior walls within a certain distance of a property line. The code will detail the hours of fire retardant required under different circumstances. Doors allowing passage through fire walls must be fire doors.

firm commitment A lender's unqualified and irrevocable promise to grant a loan for a specified amount, which may be a firm amount or a certain percentage of the appraised value. The commitment will also specify the interest rate, term, and collateral. For commercial mortgages, the borrower should ask that the firm commitment include a statement of anticipated legal fees and other fees and expenses and, if possible, negotiate an upper limit to attorneys' fees.

FIRREA See *Financial Institutions Reform, Recovery and Enforcement Act.*

first-generation space Office space in a new building. First-generation space lacks walls, floor covering, ceiling tiles, and lighting; it has never been built-out. When comparing tenant improvement allowances among buildings under consideration for leasing office space, it is important to note if the space is first generation or second generation, because the build-out will typically be much more expensive in first-generation space. Even if second-generation space has to be completely reconfigured, there will still be some savings by the ability to reuse doors and light fixtures.

first mortgage A real estate loan made to the borrower and recorded in the public records by the lender, before any other mortgages.

first refusal, right of The right to buy or rent real property if and when the owner decides to sell or lease. The owner is under no obligation to ever sell or lease, though. Contrast this with an option, in which the the person who wants to buy or lease (optionee) has a legal right to require the owner (optionor) to sell or lease, but the optionee does not have any obligation to buy or lease. With a right of first refusal, control is in the owner. With an option, control is in the other person.

Care should be taken when drafting a right of first refusal. The parties should specify an expiration date, a price or method of calculating the price, and what happens if the purchaser-lessee declines to buy or lease at a particular point: Does the right of first refusal end, or does it continue to the next time?

The parties should give particular thought and attention to describing the triggering event. What gives rise to the ability to exercise the right of first refusal? Is it the owner merely soliciting offers, or must there be a bona fide offer from a third party before the party will be notified and given the first opportunity to buy or lease? What if the owner dies? Does the party have a right to buy the property before it passes to the heirs?

first-year depreciation See *additional first-year depreciation.*

fiscal year Accounting year. Many companies use accounting years ending on June 30 or September 30, rather than the calendar year ending on December 31.

fixed assets Items on a company's balance sheet—the tangible property used in the business and not for resale; would include buildings, furniture, fixtures, equipment, and land.

fixed bid A firm price for completing a job.

fixed expenses Expenses that continue at relatively stable levels, month after month or year after year, regardless of occupancy levels, retail sales, or other areas of revenue, including property rent or depreciation, some minimal level of personnel expenses, and some minimal level of utilities. Contrast with variable expenses, which are more or less directly tied to revenue; as revenues increase, so will the expenses.

fixed lease See *gross lease.*

fixed-rate loan A certain percentage rate of interest that will not change over the life of the loan. Contrast with adjustable-rate loan or mortgage.

fixed-rate mortgage See *fixed-rate loan.*

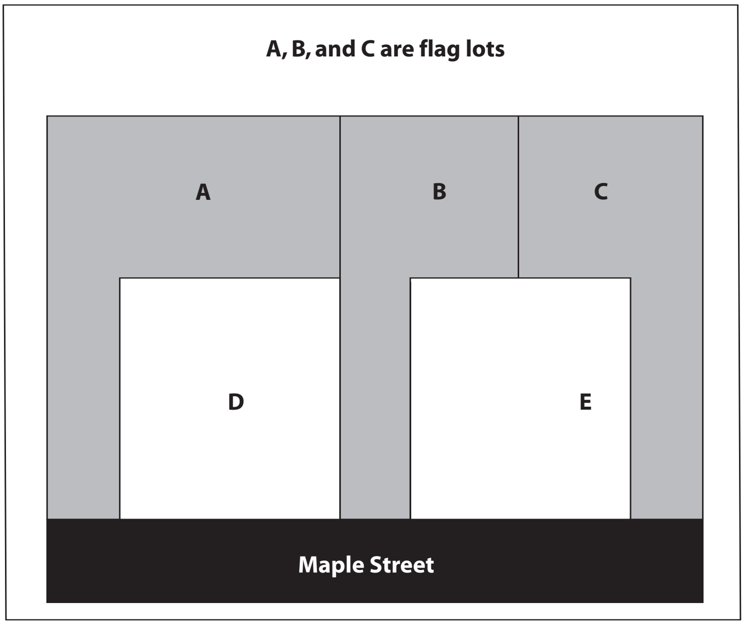
fixed-term mortgage A real estate loan for a definite period of time, such as 15 or 30 years.

fixer-upper Usually a polite way of describing a property in need of extensive repairs, renovations, or cosmetic improvement.

fixture An item of personal property that becomes part of the real property.

fixturing period A time period before a lease begins, when the tenant is allowed access to make improvements, deliver furniture, install phone systems, and other such matters.

flag lot A parcel of land shaped like a flag, with a narrow strip providing access to a public street or waterway and the bulk of the property containing no frontage. When planned, it is a way to maximize property density without having to install additional streets. Some jurisdictions require subdivision platting and approval for any project that includes building additional streets. Flag lots are a way around the platting laws.



flat An apartment.

flat-fee broker One who charges a set fee rather than a percentage of the sale price of a property. Flat-fee brokers typically offer unbundled services, or no-frills services, and almost always exclude any services connected with showing property, handling negotiations, responding to consumer inquiries, or assisting with closing.

For a flat fee, one may usually obtain some combination of the following:

- Listing on the local multiple listing service
- Yard signs and subdivision entrance signs

- An assigned phone number with voice mail for callers
- Placement on a Web site
- Packages of forms, instructions, videos, or DVDs
- A personal consultation for a specified time period
- An initial walk-through inspection with recommendations

flat lease See *gross lease*.

flat-rate tax A tax calculated as a certain percentage of income, with all persons paying the same percentage.

flexible payment mortgage A mortgage with payments that are allowed to vary, but which will always be sufficient to pay the loan over a certain amortizing period. An adjustable-rate mortgage is one example, and a graduated payment mortgage is another.

flex space Originally, industrial space that could be configured as needed for offices, manufacturing, assemblage, or warehousing. Today, the term usually refers to flexible office arrangements such as movable walls, offices shared by different people during different time slots, or any number of other flexible arrangements.

flip To buy low and sell high in a fairly short period of time; sometimes associated with predatory practices such as securing an option on property about to be foreclosed and then exercising that option only if able to find a purchaser who will pay enough to generate a profit. In the meantime, the consumer cannot sell to anyone else.

- Condo flipping is accomplished through buying reservation rights in condos to be built in the future, and then selling those rights, not the actual condo, shortly before project completion. There are many Web sites devoted to nationwide markets for condo flipping.
- House flipping usually refers to the practice of buying a home at a price substantially below market because of the need for repairs and then making the renovations and selling in a short period of time, at a substantial profit. Acquisition and renovation is typically financed with a mortgage note due in six months. The practice is risky for those unfamiliar with construction, because delays can be catastrophic.

float (1) The amount of movement in a variable-rate mortgage, as in "the loan can float 1 percent per year or a maximum of 5 percent in a lifetime." (2) The period of time after a check is deposited but before the funds have been collected or credited. If a depositor receives credit immediately, even though it may take several days for the maker's bank to transfer funds to the depositor's bank, then the depositor takes advantage of the float because it has use of the money. If a depositor does not receive credit for several days, but the bank has already received its money from the maker's bank, then the bank takes advantage of the float.

floating lien Sometimes refers to the lien of an anaconda mortgage that attaches to additional property acquired after a mortgage loan is originated. More properly refers to a lien on goods or inventory that change constantly, as in financing for a retail establishment. The lien floats among items as they come into the store and are available for sale, detaching itself as the goods are sold to consumers.

floating rate A loan interest rate that is not fixed and does not have specified times for increase or decrease, but which floats and changes as the index changes.

floating zone A land area described in the text of zoning regulations but not placed on the zoning map until a developer applies for rezoning.

flood insurance The popular name for the National Flood Insurance Program (www.floodsmart.gov) administered by the Mitigation Division of the Federal Emergency Management Agency. Flood insurance is intended as an alternative to disaster assistance, by providing better assistance at cheaper net costs to the government. Policies are available in three forms: dwelling (most homes), general property (apartments and businesses), and residential condominium association. They cover structural damage; furnaces, water heaters, and air conditioners; flood debris cleanup; and floor surfaces such as carpeting and tile.

flood insurance rate maps Maps maintained by the Mitigation Division of the Federal Emergency Management Agency. They locate and describe areas having a 1 percent risk of flooding in any given year. They can be viewed online at the FEMA's Map Service Center Web site, http://msc.fema.gov.

flood plain Any normally dry land that is susceptible of being covered by water from any natural source.

flood-prone area An area that has a 1 percent probability of flooding in any given year. Although popularly known as an area that will flood sometime in a 100-year period, this characterization is technically inaccurate.

floor Other than the obvious, refers to the bottom of something. Variable-rate mortgages may provide a minimum interest rate, called a floor, even if the rate would otherwise be less if the index dropped. Percentage leases with rent partially based on gross revenues might have a minimal amount, or floor payment.

floor area ratio The ratio of floor space in a building to lot size; used in zoning regulations to restrict the size of buildings.

floor duty The practice of assigning responsibilities to real estate agents for spending time in the office in order to be available for walk-in customers or general phone inquiries not directed to a particular agent.

floor joists Horizontal boards laid on edge and resting on the beams that provide the main support for the floor. The subflooring is nailed to the joists, and then the flooring is installed. It is increasing common to use engineered floor joists—wood and binding material rather than traditional lumber—in order to gain strength and stability.

floor load (1) The weight per square foot that the floors in a building can support, if the weight is evenly distributed. (2) The weight per square foot of a particular piece of equipment or machinery that will be installed in a building, frequently regulated in leases so as not to exceed a stated amount.

floor loan The minimum amount a lender will fund on an approved loan, with the balance payable if and when the borrower meets certain conditions, such as minimum occupancy levels or preleasing. If the borrower fails to meet the requirements, the borrower will have to secure gap financing or mezzanine financing in the interim, which can be extremely expensive.

floor plan Architectural drawings showing the layout of the floor(s) in a building, locations of load-bearing walls and/or required fire walls, dimensions for all walls, locations and swings (inward, outward, which side the hinges are on) for all doors, and locations of windows.

flyspecking A slang expression for reviewing every word, every comma that might make a difference between dependent and independent clauses, every pronoun and its antecedents (does "he" refer to the grantor or the grantee in a sentence, for example), and sketching every property description in every deed in a chain of title to make sure the same land is always described and the description makes an enclosed parcel. Comes from the expression "picking the flyspecks out of the pepper," which is an exceptionally tedious job.

FMHA See *Farmers' Home Administration*.

FNMA See *Federal National Mortgage Association*.

folio In some states, refers to the page number of the book in which real estate documents are recorded.

foot-candle A measure of light intensity. One foot-candle is the illumination measured on a surface one foot from the source of one candle. Many worker-safety regulations specify the minimum foot-candles of light required in work areas. Zoning variances for commercial properties near residential areas might place a restriction on the maximum foot-candles of lighting after a certain hour at night.

footing A concrete support for a wall, chimney, or pillar, usually wider than the structure being supported and intended to distribute the weight evenly over a larger surface area. Local building codes will specify minimum footing size for various buildings, although the better practice is to employ a structural engineer to determine the proper size, which may be in excess of the minimums.

footprint The area of land physically occupied by a building, including its square footage and shape.

forbearance The act of restraining from exercising a right.

1. Typically encountered in leases and other contracts specifying that a forbearance by one party who fails to declare a default when entitled shall not entitle the other party to rely on future forbearances and will not constitute a waiver of any rights.

2. After a loan default, lenders will sometimes enter into formal forbearance agreements with borrowers, agreeing not to foreclose if the borrowers will agree to a new payment plan, pay all attorneys' fees associated with drafting the agreement, usually agree to a higher interest rate and more collateral, and almost always agree to waive any and all claims against the lender.

forced sale An involuntary sale resulting from foreclosure, execution on a judgment, partition action by a cotenant wanting to sell the property and divide the money, or a divorce proceeding. See *distressed sale*.

force majeure Something outside the control of parties to a contract and which could not have been foreseen or planned for. Usually found in construction contracts, suspending the time limits in the event of a force majeure. It can include Acts of God, such as tornadoes and hurricanes, or acts of humans, such as a strike, terrorist attack, or other such disruptive event.

foreclosure The destruction of a borrower's rights in mortgaged property, except as may be allowed under statutes giving a post-foreclosure right of redemption. The foreclosure process varies among states, but generally segregates into judicial foreclosures and nonjudicial foreclosures.

- Judicial foreclosures involve filing a petition with a court, asking that court to enter an order as to the amount due under a mortgage loan, and then granting the lender permission to sell the property and apply the proceeds to the debt.
- Nonjudicial foreclosures are accomplished by providing some sort of public notice of the default and scheduled auction of the mortgaged property, and then carrying out the auction process.
- Some states allow a statutory right of redemption after foreclosure. This gives the borrower, and sometimes other creditors of the borrower, a certain amount of time to redeem the property by paying the foreclosure purchaser the full amount of the purchase price plus interest at a rate defined in the statute. This is different from the equity of redemption.
- The term equity of redemption means all rights of the borrower before foreclosure, but which are extinguished at foreclosure. If the borrower has any rights after foreclosure, they are granted by specific statutes giving a right of redemption.
- Some states have consumer protection statutes to guard against predatory purchasers taking advantage of foreclosure panic on the part of homeowners.
- If a borrower deeds the mortgaged property to the lender in order to avoid a foreclosure, that is called a deed in lieu of foreclosure. It is a risky route for the lender because all liens remain on the property, even those that might have been cleared off by a foreclosure.
- In most states, if a foreclosure sale does not bring enough money to satisfy the debt, the lender may sue the borrower for something called a deficiency judgment. Exceptions occur in states that limit that right when the debt is a first mortgage on the borrower's primary residence. Another exception would be if the borrower has negotiated a nonrecourse mortgage that insulates it from any personal liability.
- A foreclosure obliterates the rights of the owner (except as noted previously) and virtually all creditors who might have filed claims after the mortgage was foreclosed. This includes second mortgages, if the first mortgage is being foreclosed.

The five major categories of parties who may still have claims on property after a foreclosure are

1. Those who hold mortgages or have other claims which were filed before the mortgage that was foreclosed.
2. The IRS, if the foreclosing lender did not give it the proper notice required by federal law.
3. Those holding mechanics' and materialmen's liens, which might be for work started on the property before the mortgage was taken, but perfected by filing documents after the mortgage was recorded.
4. Local or state governments to which real estate taxes are due.
5. A bankruptcy trustee, who may set aside a foreclosure under the proper circumstances.

foreign corporation Any corporation organized under the laws of another state or country. Foreign corporations may sue and be sued in the courts of a state only if they are registered and licensed in that state. Normally, if a foreign corporation does business in a state without registration, it may not use the courts of the state to sue the defaulting party.

foreign investment in real estate The U.S. government closely tracks foreign investment in many critical sectors of the U.S. economy, including banking, technology, and real estate. Foreign investors seeking real estate opportunities may gain information at the Web site of the Association for Foreign Investors in Real Estate, www.afire.org. The U.S. Department of Commerce, Bureau of Economic Analysis (www.bea.gov), requires annual reports from all foreign direct investors in U.S. business enterprises, including real estate.

Foreign Investment in Real Property Tax Act (FIRPTA) A federal law designed to assist in the collection of income taxes when foreign owners and investors sell real property or shares in entities that own real property.

Purchasers are required to withhold 10 percent of the sales price unless either of the following occurs:

1. The IRS is asked to calculate the exact taxes that would be due, in which case that amount will be withheld.
2. The purchaser will use the property as a residence and the selling price is less than $300,000.

Purchasers must report the withholding on IRS Form 8288 or 8288-A and must report and pay over the money within 20 days after purchase. If purchasers do not withhold, they may be liable for the taxes themselves. Almost all real estate closings today require the seller's signature on what's called the FIRPTA affidavit, stating that the seller is not a foreign person. (For more information, see Publication 515, "Withholding of Tax on Nonresident Aliens and Foreign Entities," available at the IRS Web site, www.irs.gov.)

forfeiture The loss of rights to something as a result of a failure to perform an obligation. Courts often view forfeitures as penalties, which are illegal. As a result, one who is buying property under a bond for title and will receive a deed only when all payments have been made may be protected from a forfeiture if there is a default after a substantial amount of money has already been paid.

forgery A counterfeit signature or instrument. A forged deed is void and gives no rights, even to innocent purchasers for value. If title insurance was purchased by an owner, however, that owner may make a claim for compensation, or the title insurance company may take steps to buy out any competing claims.

formaldehyde A colorless liquid with a distinctive odor, classified as a volatile organic compound because it can be emitted as a gas from certain solids and liquids, even at room temperature. Almost every building component contains formaldehyde in some amount. It is used as a component in glues and adhesives, and in paints and other coatings. Some claim it is a cause of sick building syndrome.

form contract There is no such thing. Consumers often request a form contract for a real estate sale, lease, or other transaction, thinking to obtain some universally recognized, perhaps government-approved document with a few blanks for variables such as parties' names. Office supply stores, local associations of realtors, books in law libraries, and computers in real estate offices may all have forms that are in widespread use, but each is capable of negotiation and customization. One should never rely on a form to protect one's rights—every document should be read in its entirety, even the boring parts that seem like boilerplate, and changed as necessary.

formosan termite See *termite bond*.

fortress mall A shopping mall of superior quality, with at least one fashion department store, at least four anchors having minimum sales of $500 per square foot, and surrounded by a "moat" consisting of acres of parking. The goal is to capture consumers inside the fortress, where they will remain to conduct all their shopping and dining. Still a strong market segment, but seeing erosion by the newer lifestyle malls.

forum shopping clause A clause in an agreement specifying the state and county where any disputes will be heard. All states have rules regarding jurisdiction, meaning the ability of particular courts of the state (circuit, district, probate, justice of the peace) to hear particular disputes and to issue orders that are binding on the parties. All states have rules regarding venue, meaning the county in which a dispute must be heard. Forum shopping clauses alter the normal rules. They are frequently included by financially strong parties who are afraid of the whims of local lawyers, judges, and juries and would prefer that disputes are handled in their own backyard. Such clauses will be upheld where reasonable under the circumstances.

The contractual agreement to a particular forum does not necessarily mean that forum's law will apply. Choice of law is another totally different concept. Many contracts with forum shopping clauses also have choice of law clauses stating that the law of a certain state will control any disputes.

foundation inspection An examination of the support for a building to make sure it is sufficient for the size and weight of the building and the character of the soil under it. Also, the examination of an existing building to discover evidence of any defects in the foundation, such as cracks in exterior walls or sinkholes.

fourplex A small apartment building containing four residences. Many FHA loan programs are available for fourplexes.

four quadrants of the real estate capital markets An expression describing the following:

1. Private equity. Direct, private, real estate investments
2. Public equity. REITS and other publicly traded vehicles
3. Private debt. Whole loan mortgages
4. Public debt. Collateralized mortgage backed securities and other similar vehicles

four-three-two-one rule One appraisal method that says commercial property of uniform depth and with road frontage has 40 percent of its value in the front quarter of the parcel, 30 percent in the next quarter, 20 percent in the next quarter, and 10 percent in the rear quarter.

fractional interest Some interest in real estate less than the entire bundle of rights.

franchise (1) A contractual relationship whereby one party (franchisee) is entitled to use the trade name, image, procedures, and trade secrets of another (franchisor) usually in return for paying an initial purchase price and a percentage of gross revenues over the period of the arrangement. In most instances, there is a separate fee for the franchisee's share of national and regional advertising campaigns. Real estate franchises include Century 21, RE/MAX, and ERA. (2) A government grant of some privilege, such as the ability to operate as a corporation or the ability to sell drinks and sandwiches in the county courthouse.

fraud A deceitful practice. Fraud consists of a misrepresentation of a material fact that is relied upon by another party to his or her detriment. There is no requirement that the misrepresentation be intentional. The thing misrepresented must be a fact; it is very difficult to prove fraud when one fails to fulfill his or her obligations but had good intentions in the beginning.

There are three types of fraud:

1. Intentional fraud. Punitive damages may be assessed for this type of fraud.
2. Negligent fraud. As when one makes a statement recklessly but without any intention to deceive, and someone relies on that statement and is injured when it turns out to be false. One example would be a real estate agent telling a buyer that all appliances are new when, in reality, the agent didn't know but thought they looked new. Depending on the degree of recklessness involved, this type of fraud may or may not support punitive damages.
3. Innocent fraud. As when one takes steps to confirm facts but is perhaps mistaken or given mistaken information, and then relays that information to someone else who relied on it and was injured.

The Statute of Frauds is a rule that says certain contracts must be in writing, including contracts having to do with real estate. It has nothing to do with fraud, per se, except to protect against possible fraud by requiring a writing.

Freddie Mac See *Federal Home Loan Mortgage Corporation*.

free and clear title Title to real property that is absolute without any liens, mortgages, adverse claims, or other encumbrances.

freehold An estate in land for life or in fee. The duration of the interest is undeterminable. The estate may end at some point in the future, but no one can predict the date of termination. Best understood by reference to its opposite, which is a leasehold.

free market system auction An auction process used by the Federal National Mortgage Association (Fannie Mae) to accept bids from approved lenders as to the amount, price, and terms of existing mortgages those lenders desire to sell to Fannie Mae. Once Fannie Mae decides how much it can spend to buy mortgages, it notifies the winning bidders, who have a certain amount of time within which to deliver the mortgages. The servicing agent continues to service the loans and receives a fee from Fannie Mae.

friable Crumbly, brittle. When asbestos is friable, it is hazardous.

frontage The length of a property line along a road, street, waterway, or important amenity such as a state park.

front-ending Doing something in advance of the economically prudent time, taking into consideration all risks. Local governments may front-end the streets in a project and require the developer to build all of them, even though the rearmost lots might never sell. Metropolitan development boards might front-end incentives and pay them to a developer in advance, in order to help defray start-up costs, rather than the more normal method of giving tax breaks over time.

front-end ratio A mortgage qualification calculation prepared by taking the proposed monthly mortgage payments, plus real estates taxes and insurance, and dividing that number by the borrower's gross monthly income without reduction for taxes.

> **Example:** *Steve makes $4,000 per month. The mortgage for a home he would like to buy would result in payments of $1,100 per month. His front-end ratio is $1,100 ÷ $4,000 = 27.5%. This is an acceptable ratio for lenders, who would prefer to keep it at 29 percent or lower.*

front foot A method of describing or pricing commercial real estate by the number of feet of road frontage the parcel has. The drawback is that there is no widely recognized standard for depth, so a property selling for $1,500 per front foot might be half the depth of one selling for $2,400 a front foot, but no one can tell just from the price.

front-loading See *front-ending*.

front money Cash needed to start a development, as opposed to borrowed funds. See *seed money*.

frost line The depth of frost penetration into the soil. It varies from area to area, depending on the soil quality in a particular location, but can average 3 to 4 feet below the surface. Building foundations should penetrate below the frost line in order to avoid the shifting caused by frost heaving.

Many local building codes allow an exception with the use of a frost-protected shallow foundation, which uses insulation and drainage techniques to raise the frost line to just below the surface.

frost-protected shallow foundation A construction method that uses insulation and drainage to artificially raise the frost line of soil to a level that allows relatively short—shallow—foundations. In cold climates, building foundations must extend below the frost line to a depth of soil that does not freeze. Freezing causes soil to heave upward and then sink back again, shifting everything on top of the soil. It does not result in a very stable building base unless one takes steps to prevent soil movement.

FRT See *federally related transactions*.

fructus industriales The fruits of industry, meaning crops and other annual plants that must be sown each year in order to produce. At common law, these things were considered the tenant's, who could make claim for them at the end of a tenancy. The terms fructus naturales and fructus industriales are not representative of modern agribusiness or ranching, but come from a time before the industrial revolution.

fructus naturales The fruits of nature, meaning things produced by nature without the help of humans, such as fruits, wool, offspring of animals, and milk. At common law, these things did not belong to a tenant, who could not make any claim for them at the end of a tenancy. The terms fructus naturales and fructus industriales are not representative of modern agribusiness or ranching, but come from a time before the industrial revolution.

FSLIC See *Federal Savings and Loan Insurance Corporation*.

FTC See *Federal Trade Commission*.

full capacity Able to enter into contracts without any disabilities at all, such as would be attributable to age or mental abilities.

full disclosure A requirement to reveal all information relevant to a transaction. Some states have full disclosure laws requiring transmittal of property condition information to buyers.

full reconveyance A mortgage concept used in title theory states, where the borrower transfers title to the real property to another, usually a trustee, and is entitled to full reconveyance, or a return of the legal title, when the debt has been paid in full.

full service In connection with a lease, this indicates that the landlord provides janitorial, parking lot cleaning, and waste removal services, but the tenant may have to pay for these services through its pro rata portion of the building maintenance expenses. Contrast with *full-service gross lease*.

full-service gross lease A lease requiring the landlord to provide and pay for all maintenance, upkeep, repairs, janitorial services, waste removal, utilities, insurance, taxes, and other operating expenses for a property in return for a fixed periodic rent from the tenant.

fully amortizing loan A loan calling for periodic payments that include some amount of interest and some amount of principal reduction, such that, at the end of the loan term, the entire principal amount of the loan plus all accrued interest will have been paid in full.

functional obsolescence A loss of value from all factors within a property except for physical deterioration. This may include a poor floor plan, the lack of a garage, high ceilings that dramatically increase heating costs, or the lack of central air conditioning in the South. Contrast with economic obsolescence (factors outside the property that depress its value) and physical obsolescence (deterioration).

funding (a loan) The act of a lender paying money under a loan.

funding fee (1) A fee charged to the borrower by the Veterans Administration for guaranteeing a loan. (2) A fee charged by lenders as additional profit, and which may be negotiated downward.

funds from operations A measure of the profitability of any business, but particularly a real estate investment trust. It is net income without downward adjustments for depreciation or amortization and without considering any extraordinary revenues such as from the sale of an asset.

furniture, fixtures, and equipment (FF&E) All the property at a location, except for the real property itself. Usually referred to by the initials only (FF&E). Lenders will often take security interests in the FF&E of a business borrower, in addition to a mortgage on the real property, so as not to encounter a possible post-default battle over what was covered by their lien.

future-advances mortgage A real estate loan that contemplates some portion being funded—advanced—at the beginning of the loan, usually for a purchase of property. The amount advanced is not the full allowable amount under the loan so that future monies may be obtained as necessary for construction, renovation, or other uses in or for the property.

future interest Interest in land in which the possession and enjoyment are deferred until a future date.

FY Fiscal year, as in FY07.

G

GAAP (pronounced "gap") Generally accepted accounting principles declared by the Financial Accounting Standards Board (FASB).

gain The profit on the sale of an asset. One may *realize* gain, as when property is taken in condemnation, but not *recognize* gain for tax purposes until a later date. When reading tax advice, it is extremely important to differentiate between these two concepts, as authors sometimes assume that all readers understand the difference.

game theory The science of evaluating the relationships among parties and the optimal choices for participants in any given situation. Game theory is an important tool in negotiating. Two frequently encountered game theory models are the prisoner's dilemma and chicken.

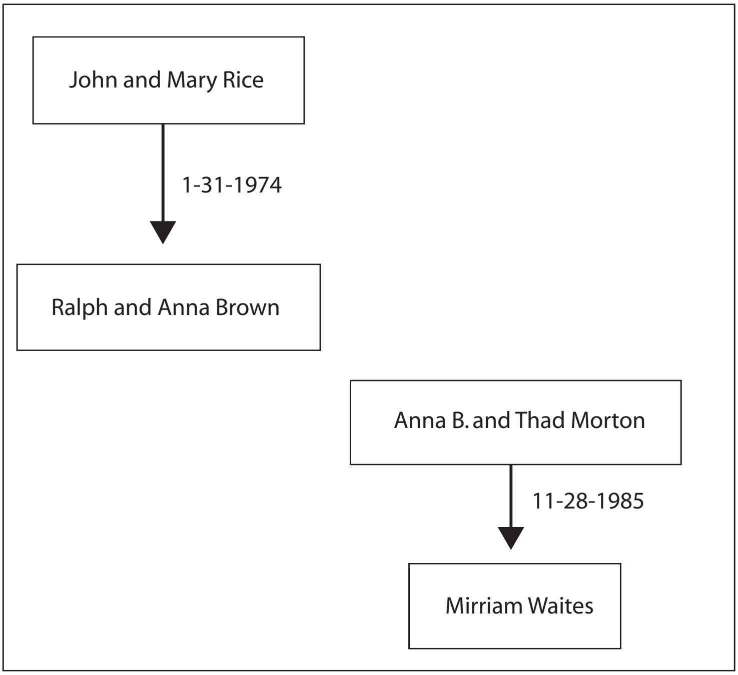
- The prisoner's dilemma model involves parties trusting each other to make the best choice for all, without prearranging their plans, rather than making the best choice for an individual. This is seen in the real estate world in quoting commissions, which involves informal, nonverbal negotiations among real estate agents. Although there is no price fixing going on, all brokers understand that if they cooperate and refuse to lower prices, they will all make a good living. If one or a few lower commission rates in order to capture a lot more business, those few will do well until all brokers lower their prices and get into a price war, after which all will do poorly.
- Chicken is the "sport" of two cars racing against each other, head-on, with the first one to swerve being labeled chicken and losing the match. The best way to win a game of chicken is to remove your ability to swerve and to let the other side know that you no longer have any freedom to move—no freedom of negotiation, in other words. For example, the common use of the chicken theory is to tell a seller that you do not have, and cannot borrow, enough money to meet the asking price. The seller will have to reduce the price, or you will have to find another property.

gap A time period when an additional title search is being conducted to determine if any adverse findings have occurred since the original title search and the recording of the deed or mortgage.

gap financing A loan that covers the difference between the construction loan and the permanent financing. See *bridge loan*.

gap in title A break in the chain of title, as when one finds a deed into party A, and then later a deed out of party B, with never any more claims or deeds from party A.

Example: *You see a deed into Ralph and Anna Brown in 1974, but no deed out of their names. On the other hand, the same property suddenly has a deed in 1985 from "Anna B. and Thad Morton" to Mirriam Waites, but you can't find a deed into Anna B. and Thad Morton. This is a gap in title. Most likely, Ralph Brown died and his widow, Anna Brown, married Thad Morton, but you will need additional research to clarify this.*



garage mahal A slang expression for an opulent parking garage.

garnishee A party who owes money or holds property belonging to the judgment debtor.

garnishment A process involving three parties:

- Judgment creditor. The party who takes a judgment against a debtor (can also be the IRS or a state's Department of Revenue).
- Judgment debtor. The party who owes the debt.
- Garnishee A party who owes money or holds property belonging to the judgment debtor.

In this legal process, the judgment creditor obtains a court order requiring the garnishee to turn over funds or property to the judgment creditor instead of to the true owner, the judgment debtor. The most common garnishments are against employers, requiring them to withhold a portion of wages and salary and pay it to the creditor rather than to the employee. The second most common garnishment is against a bank, ordering it to turn over bank account funds to the judgment creditor or the IRS.

gated community A fenced and gated community of homes. Most local governments require public access to all roads maintained by the government. As a result, gated communities must usually assess homeowners in order to maintain their own roads.

gatekeeper A slang expression to describe the person you must persuade or impress just to get your proposal in front of a decision maker.

gazump An action by a seller to increase the purchase price of goods or property after the buyer is emotionally invested but immediately before the paperwork is signed. Contrast with *gazunder*.

gazunder An action by a buyer to lower the offer for goods or property after the seller has already mentally spent the purchase money and is emotionally invested in a sale at that time, but immediately before the paperwork is signed. Contrast with *gazump*.

GC General contractor. Also can be written as G/C.

general agency See *agency*.

general agent See *agency*.

general and administrative expenses Usually a pro rated portion of general overhead, charged to a particular project although not capable of segregation into goods or services provided for that project. An example could be the cost of paper, toner, office equipment maintenance contracts, phone lines, and office space.

general bill of sale A document transferring ownership of personal property to another. There are no particular requirements, so long as someone can identify the parties involved and the thing being sold. It is not necessary to spell out the amount paid, but it is usually a good idea to include it.

> **Example:** *"John Jones sells to Lydia Lang, for $200, one 10x15 foot hard plastic portable shed located at 135 Elm Street, Pleasant, New York."*

general contractor One who is responsible for construction of a building or other improvement for an owner or a developer. Most states have educational, experience, and insurance requirements as a condition of obtaining a general contractor's license. They also prohibit unlicensed persons from constructing improvements for another unless the project is under a certain specified size. The trade association is the Associated General Contractors of America (www.agc.org), established in 1918. You may check licensing requirements and the status of local contractors at www.contractors-license.org, maintained by the Craftsman Book Company.

general lien A lien that attaches to all property of a debtor located within the area where the lien was recorded. Judgments and IRS liens are general liens, which may be satisfied from the sale of any property found. Contrast with specific lien, which is upon specifically described property only.

generally accepted accounting principles (GAAP) (pronounced "gap") Established by the Financial Accounting Standards Board (FASB), these are the guidelines for proper accounting practices.

general partner One who may enter into contracts for a partnership, is liable for all partnership debts, is entitled to vote on all partnership affairs, and is entitled to a pro rata share of all partnership profits. The general partner may be an individual or a corporation. A partnership may be comprised entirely of general partners, or it may have one or a few general partners with the remainder of the investors being limited partners.

general partnership A partnership in which all partners are general partners. Contrast with *limited partnership*.

General Services Administration (GSA) A government agency established in 1949 with the passage of the Federal Property and Administrative Services Act, consolidating several earlier agencies. The GSA's areas of responsibility are public buildings, federal supply, and national archives and records. It has been responsible for establishing the Federal Citizen Information Center in Pueblo, Colorado; bringing the government into the credit card age for employee expenses; and creating www.firstgov.gov, the official portal for all government Web sites. The GSA Web site is at www.gsa.gov, which is the starting point for all inquiries regarding surplus property sales and auctions.

general warranty deed An instrument transferring ownership of real property, and which warrants—promises—that the seller has good title with no adverse claimants and that the seller will defend the title against other parties should that prove necessary. Contrast with *special warranty deed,* which simply promises that the seller has not done anything to cause a problem with the title. Contrast also with *quitclaim deed*, which makes no promises at all, but simply transfers any interest the seller might have, if anything.

gentrification The informal process of revitalizing an older and deteriorated neighborhood into more upscale homes owned by more affluent occupants. The first step is usually taken by young professionals seeking affordable housing in an urban setting, who immediately begin using disposable income to upgrade their properties. Their efforts attract other like-minded home buyers. Eventually the neighborhood reaches a point where the existing homeowners can afford to sell their properties and buy elsewhere, but they can't afford to pay the increasing property taxes. The process gains momentum at that point, with former apartment buildings being converted to condos, single-family residences undergoing complete renovations, and the entire neighborhood changing to middle class or upper-middle class. It is controversial, with some claiming it destroys the ethnicity and integrity of many older neighborhoods, all in the guise of ethnocentric notions of "improvement."

geodetic survey system A national coordinate system for mapping the lands, waters, coastlines, and even the ionosphere. Geodetic coordinates are indispensable for routing transportation and delivery of goods, locating underground utility equipment for repairs, excavating, and restoration of the earth's surface. The entire Internet depends on global positioning system (GPS) clocks for the precise timing necessary to avoid instant, perpetual gridlock. Without the spatial coordinates supplied by the geodetic survey system, which are necessary for minute adjustments in the delivery of time information, the Internet, the financial sector, and a host of other necessary sectors of our economy would be in the Dark Ages.

geographic information system (GIS) A computer mapping program in which land characteristics and/or demographic information may be revealed and printed as color-coded overlays.

gerbil tube Slang for a glass-enclosed pedestrian overpass connecting two buildings.

ghetto A term with its origins in eastern Europe, used to designate the part of town occupied by Jewish citizens. Now the term ghetto is used to describe any urban area suffering significant deterioration, often predominated by one or a very few ethnic or racial groups. Disputes often arise regarding whether lenders, insurers, and other service providers are engaged in illegal discrimination when they redline these neighborhoods, or whether they are assessing risks based on the quality of the infrastructure and not on any judgments regarding the inhabitants.

GI Bill Now called the Montgomery GI Bill, it offers support for veterans seeking postsecondary education.

gift causa mortis A gift in contemplation of death. This was an important term at one time because the IRS required such gifts, made within 3 years of death, to be included in the gross estate for estate tax purposes. You will still encounter the word, but the legal significance is no longer important because such property is no longer included in the estate.

gift deed A deed with love and affection as the consideration, but nothing else of generally accepted monetary value.

gift letter A letter provided to a lender or government agency stating that money to be used as the down payment for a home loan was a gift and not a loan from the donor.

gift tax A federal tax that must be paid by a donor. The tax is based on the value of lifetime gifts made to others except in the following situations:

- For the base year of 2004, one can make gifts of up to $11,000 of cash or property per year to each recipient without incurring gift taxes; spouses may give up to $22,000 per year to each recipient. After 2004, there is a cost-of-living adjustment. This is an important aspect of estate planning. See *family limited partnership* for details.
- Tuition or medical expenses paid directly to the educational or medical institution are not counted as gifts, regardless of the relationship with the student or patient.
- Gifts to spouses are not taxable; there are no dollar limits.
- Gifts to political organizations or charities are not taxable.

For more information, see Publication 950, "Introduction to Estate and Gift Taxes," available at the IRS Web site, www.irs.gov.

GI loan GI is a slang term for armed services personnel—"government issue." A GI loan is a loan program for armed services personnel. See *Veterans Administration*.

Ginnie Mae A corporation formed in 1968 and placed under the control of the Department of Housing and Urban Development (HUD). Ginnie Mae makes no loans, nor does it buy or sell mortgages. Instead, it guarantees pools of federally insured or federally guaranteed loans. It is almost never called by its true name, which is the Government National Mortgage Association (GNMA) (www.ginniemae.gov).

going-concern value The value of a business in operation, taking into account the goodwill and the value of the income, in addition to hard assets, such as real estate and equipment. When appraising a project to develop income-producing property, the appraiser will usually provide two numbers—one for the project on the day of completion, with no tenants, and one when it reaches stabilized occupancy and is a going concern. Lenders who take mortgages on income-producing property with intensive management aspects—such as hospitality properties—usually obtain a going-concern rider for the title insurance so that coverage will be increased above the value of the real property.

going dark A slang expression for a retail store closing its doors and discontinuing operations at a particular site. Many shopping center and strip center leases prohibit an anchor store—the one that draws traffic to the center and assists the smaller stores with business—from going dark. Without the clause, the anchor store would be able to move to another location, close operations at the old location but continue paying rent, and effectively destroy the business of all other tenants because of the reduction in traffic.

going-in capitalization rate A total obtained by dividing a project's first year's net operating income by the purchase price or development cost.

gold plating Including unnecessarily expensive items in a construction or renovation project to justify a large budget or a substantial rent increase.

good and marketable title A title to real estate, free of any liens or adverse claims.

good and merchantable title See *good and marketable title*.

good consideration Usually signifies something founded on moral obligation or affection for the value necessary to support an enforceable contract. Many deeds will recite they are in consideration of love and affection. This is good consideration, and is sufficient, but it is not valuable consideration.

good faith Honesty.

good-faith estimate An initial estimate of expected closing costs, net proceeds to seller, gross cash required of buyer, or loan expenses. By virtue of various state and federal laws, a seller's real estate agent may be required to provide a good-faith estimate of net seller proceeds to accompany every offer; the closing company may be required to provide a good-faith estimate of closing expenses to the buyer, and a lender may be required to provide a good-faith estimate of loan costs to a borrower.

good funds Collected funds in a bank account and usable immediately by the owner of the account.

good title See *good and marketable title*.

goodwill An intangible asset consisting of the public esteem in which a business is held. When a business is sold, the difference between the value of the hard assets and the value of the income stream is often attributed to goodwill. One may not depreciate goodwill, but it can be amortized over 15 years because of its inclusion in the IRS definition of Section 197 intangibles.

Government Accountability Office (GAO) An investigative arm of Congress, formerly called the General Accounting Office. Members of Congress may request a wide variety of reports, analyses, and raw data, which is supplied in a nonpartisan manner by the GAO. It also recommends actions to be taken by Congress as a result of findings in the reports. Its Web site, www.gao.gov, contains an excellent search engine to find reports on housing, financial services, and natural resources, to name a few topics.

A few interesting reports related to real estate include

- ''Financial Institutions: Issues Regarding the Tax-Exempt Status of Credit Unions" (important because credit unions usually offer lower interest rates because of their tax-exempt status, but banks are crying "no fair" over the situation.)
- ''Real Estate Brokerage: Various Factors May Affect Price Competition"
- ''Title Insurance: Preliminary Views and Issues for Further Study"
- ''Catastrophe Risk: U.S. and European Approaches to Insure Natural Catastrophe and Terrorism Risks"
- ''Consumer Protection: Federal and State Agencies Face Challenges in Combating Predatory Lending"
- ''Residential Care Facilities Mortgage Insurance Program: Opportunities to Improve Program and Risk Management"
- ''Public Housing: Information on the Roles of HUD, Public Housing Agencies, Capital Markets, and Service Organizations"
- ''Elderly Housing: Federal Housing Programs and Supportive Services"

Government National Mortgage Association (GNMA) Almost always referred to by its popular name—see *Ginnie Mae*.

government patent The original deed out of the government and into the first private individual to own a particular parcel of land. A thorough title search will trace the title of real property all the way back to a government patent.

Government Printing Office (GPO) The federal government's primary, centralized resource for gathering, cataloging, providing, authenticating, and preserving published information in all its forms. It maintains a 1.5 million square foot facility in Washington D.C. for processing, printing, and distribution of materials. Unless one knows the specific government agency responsible for particular materials, GPO's Web site, www.gpo.gov, is the best place to start any search regarding laws, regulations, procedures, forms, advice, or virtually anything else prepared by or collected for the U.S. government.

government rectangular survey system See *public land survey system*.

government-sponsored enterprise (GSE) One of a group of financial services organizations created by the government. Some are owned by the federal government, some are owned by private individuals, and some are owned by corporations that use their services. All of them enjoy exceptionally low loan rates and exceptionally high sales prices for their bonds and other debt instruments because of the implicit backing of the U.S. government. They include

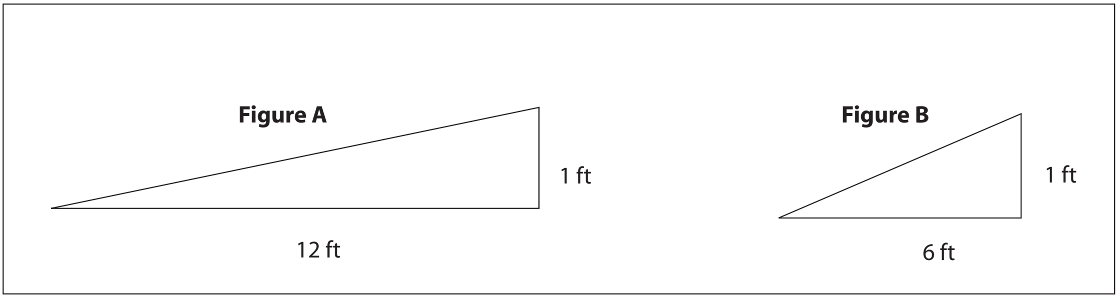
- Federal Home Loan Banks. Owned by over 8,000 community financial institutions that use the services of the FHLBs.
- Federal Home Loan Mortgage Corporation (Freddie Mac). A stockholder-owned, publicly traded corporation listed on the New York Stock Exchange as FRE.
- Federal National Mortgage Association (Fannie Mae). A stockholder-owned, publicly traded corporation listed on the New York Stock Exchange as FNM.
- Government National Mortgage Association (Ginnie Mae). A wholly owned (by the government) corporation within the Department of Housing and Urban Development.
- Farm Credit Bank. Federally chartered and borrower-owned financial institutions.
- Federal Agricultural Mortgage Association (Farmer Mac). A stockholder-owned, publicly traded corporation listed on the New York Stock Exchange as AGM.
- Student Loan Marketing Corporation (Sallie Mae). A stockholder-owned, publicly traded corporation listed on the New York Stock Exchange as SLM.

government survey method See *public land survey system*.

GO-Zone Certain named states and counties in the southern United States, as designated in the Gulf Opportunity Zone Act of 2005. This legislation was passed by Congress in the wake of the devastating 2005 hurricane season to provide tax benefits in hurricane-ravaged areas. Among other benefits, improved property purchased and put into use after August 25, 2005, and before January 1, 2009, may have 50 percent of the value of the improvements depreciated in the first year. In addition, demolition expenses may be written off as expenses rather than capitalized, and the Section 179 expense limits were increased dramatically. Neither the properties, nor the investors, need to have suffered any hurricane damage. The program is similar to the now-defunct Liberty Zone tax benefits enacted after 9/11. For more information, see Publication 4492, "Information for Taxpayers Affected by Hurricanes Katrina, Rita and Wilma," available at the IRS Web site, www.irs.gov.

grace period The allotted time during which a payment can be made without penalty and without entry upon credit records as delinquent or in default.

Grade (1) A designated ground level. (2) To change the contours of land.



Gradient The slope, or change in elevation, of land or improvements such as a pipe or a road. It is expressed as the ratio of inches (or feet) of rise or fall over a specified distance. It is similar to the concept of pitch in roofing. Figure A (above) has a gradient of 1:12 because the grade increases by 1 foot over a distance of 12 feet. Figure B has a gradient of 1:6.

Graduate REALTORS® Institute (GRI) An education program developed by the National Association of REALTORS® (www.realtor.org) and offered through state REALTOR® boards. Members may earn the designation after completion of 90 hours of coursework.

graduated payment mortgage A home loan structured to provide lower payments in the early years, growing as the homeowners' financial situation hopefully improves. The FHA-insured graduated payment mortgage plan is called a 245 loan. (Do not confuse with the FHA-insured 245(a) program, called a growing equity mortgage.)

graduated rental lease A commercial lease that offers low rental rates in the early months or years, increasing over time to reach market rates. Sometimes the later rents are greater than market rates, as when the low early rent must be recouped in later years; usually offered as an incentive to secure tenants for a new building or one suffering the recent departure of an exceptionally large tenant. Other times it is offered when a large tenant vacates but continues paying rent for the unexpired term of the lease—the old tenant will make an arrangement with the landlord and effectively subsidize the new tenant's rent for some period of time.

Gramm-Leach-Bliley Act Contains privacy provisions regarding consumers' financial information. Financial institutions are required to provide information to their customers regarding information-gathering and information-sharing practices. Consumers may opt out if they do not want their information shared with nonaffiliated third parties.

grandfathering An expression used to describe a statutory or contractual willingness to allow some activities or former rights to continue even though not technically allowed under current conditions. For example, downtown zoning regulations no longer allow gas stations in the area, but Fred's Fuel was doing business before the zoning laws went into effect, so it is grandfathered and can stay in business.

grand list A name for tax rolls in the New England states.

granny flat A slang expression for accessory apartments in areas of single-family zoning; also called mother-in-law apartments or maid's quarters, they may or may not be allowed under zoning regulations.

grant The act of conveying title to real estate via a voluntary transfer. In some states, use of the words "grant, bargain, and sell" in a deed automatically incorporates some or all of the typical deed warranties. (See *warranty deed*.) In order to avoid the consequences of such statutes, if a grantor wishes to convey title without any warranties, it should use a quitclaim deed or the words "bargain, sell, and quitclaim" rather than "grant, bargain, and sell."

grantee A person who receives the title of real estate via a deed.

grantor A person who gives title to real estate via a deed.

grantor-grantee index A method of tracing ownership of real property. Before widespread use of computer databases, all deeds in the abstract system of recording were recorded in deed books, but indexed in grantor-grantee indexes and grantee-grantor indexes. These are large books divided into alphabetical sections such as "Aa through Ad," "Ae through Al," and so on. Each deed was recorded by the grantor's name and then by the grantee's name in the appropriate section of the index. Depending on the volume of transactions over time, an index book might contain entries for a few or for many years.

gratuitous agent An agent who acts without compensation, but who still owes full fiduciary responsibilities to his or her principal.

grave dancer See *bottom feeder*.

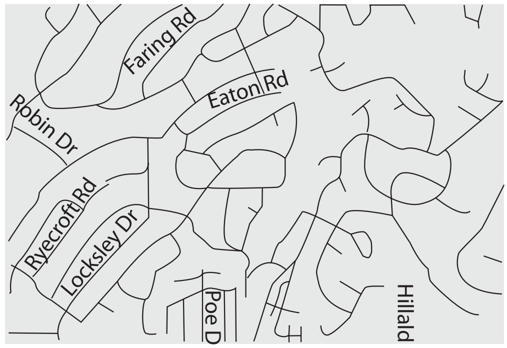
greater fool theory An investing theory that supports buying overvalued property in a hot market because a greater fool will come along and buy it from you at a profit. Like the game of musical chairs, the greater fool theory breaks down when one misjudges when the music will stop and there won't be enough fools (chairs) to go around.

greenbelt An area of natural vegetation around a development, intended to provide a buffer and natural setting. It may be required by zoning or restrictive covenants or may be simply an aesthetic choice.

green space A natural area in or around a development, intended to provide buffer, noise control, recreational use, and/or wildlife refuge, all in order to enhance the quality of life in and around the development.

GRI See *Graduate REALTORS® Institute*.

Gridiron system.



Street hierarchy system.

gridiron Used to describe the numbered rectangular street and avenue system once popular with urban planners. For example, 101 1st Avenue would be on 1st Avenue, between 1st Street and 2nd Street. Contrast with the *street hierarchy system* (above), which is a more disorganized street system consisting of neighborhoods with very limited entrances and exits, and streets with names rather than numbers.

grid system See *gridiron*.

gross area A term that must be defined with each use; sometimes it means the total heated and cooled floor area of a building, measuring from the exteriors of all walls and including all floors. Other times it is used to signify space measured from the inside of the exterior walls.

gross income The total revenue of a business or individual before deduction for expenses, allowances, depreciation, or other adjustments.

gross income multiplier A rule of thumb for evaluating the reasonableness of an asking price. One compares the monthly or annual gross income to the asking price and evaluates how that compares to typical ratios for similar properties. For example, some investors will not pay more than 100 times the monthly gross income for a property. If a house rents for $900 per month, the investor will pay $90,000 but no more. The method is not a good indication of value and would never be employed by an appraiser, but it has its uses as a preliminary qualifier or disqualifier of properties.

gross lease A lease for a set amount of rent each month, with the landlord paying all expenses of the property and its management. It is the typical form of lease for residential properties. Contrast with a net lease in which the tenants reimburse the landlord for some or all of the expenses of ownership and management. (Net leases are common in commercial transactions.)

gross leasable area (GLA) A total amount of floor space available for rental to tenants; typically encountered in the retail development industry, although it also applies to office space.

gross potential income The total rent possible from a property if it were 100 percent leased at market rates (with no deductions for bad debt,) plus ancillary income such as from laundry machines and late fees. Contrast with *gross potential rental income*.

gross potential rental income The total rent possible from a property if it were 100 percent leased at market rates (with no deductions for bad debt,) but does not include ancillary income like laundry machines or late fees.

gross rent multiplier See *gross income multiplier*.

gross square footage The total number of square feet of a building, measuring from the outside of the exterior walls and including all floors. The term is generally encountered in an institutional setting where the ratio of head count to gross square footage of buildings is important for determining capacity and the need to construct more buildings.

gross up To artificially increase operating expenses in a project for accounting purposes in order to calculate each tenant's pro rata share of those expenses. Most commercial leases provide that actual operating expenses will be increased—grossed up—to what they would be if the project were 95 percent leased. That figure is then divided among the tenants according to their pro rata share of expenses, as determined by their pro rata share of leased space.

ground area See *footprint*.

ground lease A long-term lease of land in which the tenant will erect improvements at its own expense. Not a desirable arrangement from the tenant's point of view, but sometimes the only way to gain access to extremely valuable real estate in an excellent location. The owner may be unwilling to sell, or the owner may have received the property by gift or deed (such as a church or university) and be prohibited from selling for some period of time. At the end of the lease term, the improvements become the property of the landowner.

ground rent The rent paid under a ground lease.

groundwater Water below the earth's surface, saturating soil and rock at the level of the water table and below. It supplies approximately 35 percent of the drinking water in the country and, as such, is a source of much concern for the Environmental Protection Agency. If one purchases a property with contaminants, and those contaminants have leached into the groundwater, then remediation will usually be required before development can proceed.

group boycott An illegal practice in which two or more real estate brokers or agents refuse to cooperate and split commissions with another one, usually a discount broker.

group home A residence for a group of persons with similar special needs, such as developmentally challenged adults or abused women with small children.

growing equity mortgage (GEM) A home loan arrangement in which the payments are increased each year by a specific amount, with the additional money credited to additional principal reduction. As a result, the loan is paid in full earlier than the normal amortization period. The FHA-insured GEM program is called a 245(a) loan.

grow your own buyer strategy When seeking out occupants for a single-tenant building, searching for one that is likely to desire purchasing the building in 3 to 5 years.

GSE See *government-sponsored enterprise*.

guarantee The act itself, or also the document, whereby one agrees to pay a debt if the principal obligor does not. Under common law, creditors had to exhaust their remedies against a debtor before pursuing a guarantor. Today, almost all guarantee instruments contain clauses allowing the creditor to seek payment directly from the guarantor if there has been a default by the debtor. Guarantee agreements must be in writing to be enforceable. Usually, there must be some consideration passing to the guarantor unless the instrument creating the obligation (note, lease) is signed at the same time as the guarantee, in which case the law assumes the guarantor has some interest in the transaction.

guardian A person who operates under court supervision and handles the affairs of a party—the ward—who is incapable of doing so. Wards may be minor children or those adjudged incompetent. Guardians may execute deeds on behalf of their wards. In some states, a guardian may not place a mortgage on property owned by the ward, nor may the guardian buy property subject to a mortgage.

guide meridians Lines placed every 24 miles in the public land survey system in order to correct for the earth's curvature. Meridian lines are imaginary lines running north and south. They cannot be parallel because the earth curves as it approaches the poles. As a result, they cannot be a uniform 6 miles apart, as they should be. The guide meridians correct for this.

Gulf Opportunity Zone Act of 2005 See *GO-Zone*.

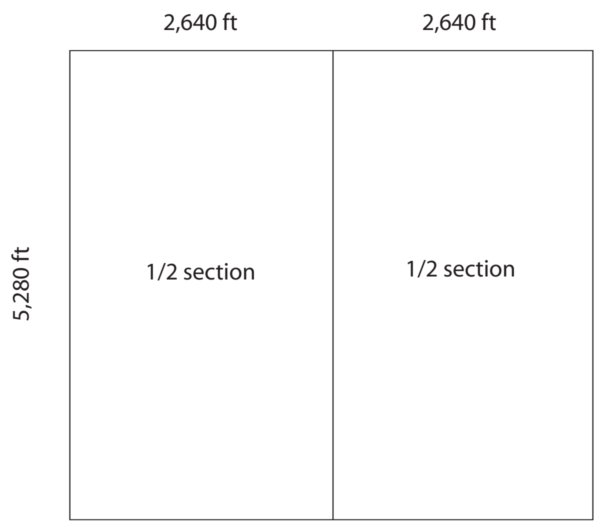
H

habendum clause The part of a deed that begins with the words "to have and to hold" and that defines the quantity of estate granted, such as "to have and to hold for and during her natural life and thereafter to grantor." This example gives a life estate to the grantee and a remainder to the grantor.

habitable Living quarters capable of being occupied without danger to health or safety and in a manner generally consistent with minimum living conditions for the community. Many states require landlords to provide habitable dwellings to tenants.

half section See *public land survey system* for a full explanation.

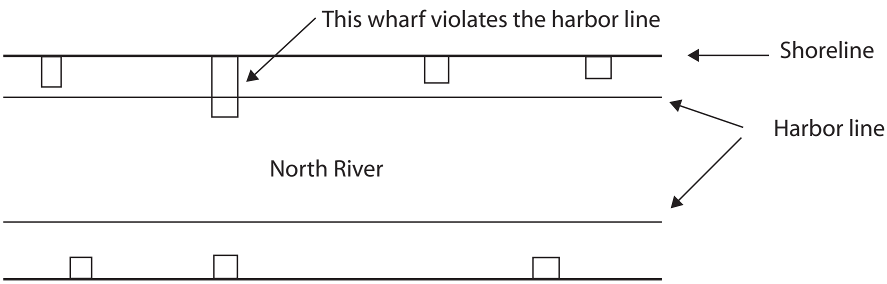
> **Example:** *A section of land is 1 square mile, being 5,280 feet on each side and containing 640 acres. A half section can be the north or south half, or it can be the east or west half, but it can't be an arbitrary 320 acres somewhere in the middle. A half section would have one side of 5,280 feet and the other side of 2,640 feet.*



handicap The Fair Housing Act prohibits discrimination on the basis of a handicap. A handicap has been defined as having the same meaning as disability. Persons with disabilities are persons with mental or physical impairments that substantially limit one or more major life activities. The term mental or physical impairment may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The term major life activity may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working. The Fair Housing Act also protects persons who have a record of such an impairment or are regarded as having such an impairment.

handyman's special In real estate advertising, generally indicates a building with substantial deterioration and in need of extensive repairs beyond normal paint-up/fix-up aesthetic improvements.

harbor line Also called the navigable line, it is an arbitrary line set by local authorities for the farthest extent wharves and other structures may intrude into the rivers and other waterways so as not to interfere with navigation.



hard costs See *direct costs*.

hazard insurance A form of property insurance that protects against physical damage to property, such as by fire or tornado.

hazardous substance Generally defined as a substance posing imminent and substantial danger to public health and welfare or the environment. The Superfund hazardous substances are specifically defined by inclusion lists within the following legislation:

- Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)
- Clean Water Act
- Resources Conservation and Recovery Act
- Clean Air Act
- Toxic Substances Control Act

hearing A legal proceeding conducted by an administrative agency in order to take testimony and arguments for or against a proposed action. Parties may have attorneys present but are not required to do so. Unlike the court system, most agencies permit corporations to appear through an officer or majority shareholder, without requiring an attorney.

heavy industry A concept usually important in zoning regulations, where it will be defined for the particular purposes of those laws. In common parlance, heavy industry is usually understood as that requiring extensive capital investment in land and machinery and thus not easily relocated. This is contrasted with light industry, which is usually more labor intensive and relatively easy to move. Other times, the term "heavy industry" is intended to convey an image of severe environmental impact through normal operations.

hectare A land measurement under the metric system, equal to 10,000 square meters, or roughly 2.471 acres.

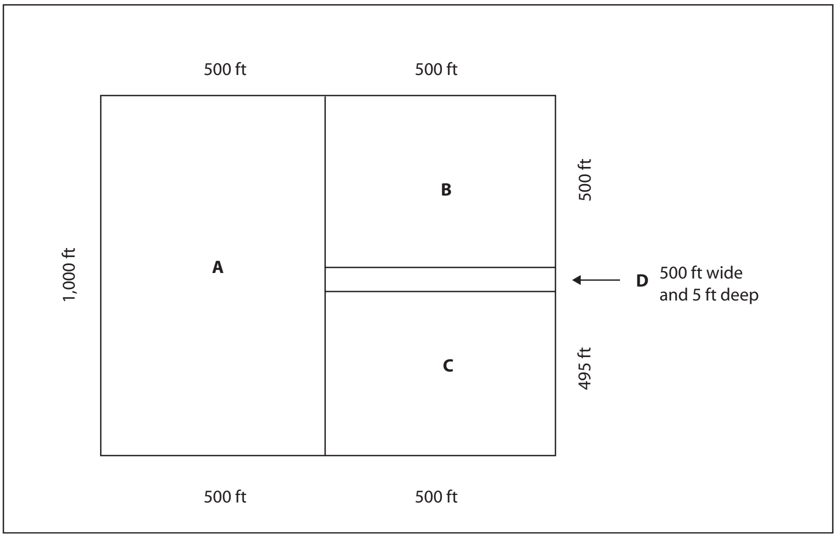
height, building Generally held to be the height from the street to the surface of a flat roof or the average height of a pitched roof, without taking into account roof structures, air handling equipment, antennas, or satellite dishes. The term is most often significant when attempting to meet zoning restrictions, which usually contain their own definitional sections. If so, then it is irrelevant what the general public considers as the true measurement of building height; the method of measurement specified in the statute will control.

heir One who inherits property.

heirs and assigns Because of peculiarities in old English common law, these words when used in a deed, "To Harry Smith, his heirs and assigns," indicate an intention to transfer the maximum possible estate in land.

hereditament Any real or personal property that may be inherited. It would not include a life estate in oneself—meaning a right to land during one's own life but no longer—because that obviously can't be inherited. The word had more importance under older English law because of the ability to place a greater variety of restrictions on land than is possible today. It is often encountered in wills, leaving "all my lands, tenements and hereditaments to my daughter… ." As a practical matter, only the word "hereditament" is necessary because it includes the other two.

hiatus A break or gap. In discussions of land, an area of land that lies between two parcels but appears from legal descriptions and public records to not be a part of either.



Example: *A parcel 1,000 feet by 1,000 feet has been divided. In writing the deeds, though, parcel C's description started at the southeast corner and proceeded northward only 495 feet rather than the full 500 feet necessary to meet the boundary with parcel B. The missing 5 feet is the hiatus. A court might hold that property C's grantor still owns the 5-foot parcel, or it might reform the deed, or it might find that the owner of parcel B adversely possessed the 5-foot parcel.*

hidden defect (1) A title defect that is not obvious from examining the public records, such as a forgery. (2) A defect in property that is not observable by the untrained eye and must be disclosed by the seller or seller's agent if known.

hidden risk See *hidden defect*.

highest and best use In public appraisal and tax appraisal, that use of land which would be the most economically advantageous over a given period of time, while at the same time being legally, financially, and physically possible. A 5-acre residential estate within minutes of downtown Houston would have a highest and best use if it were developed for offices, and therefore should be appraised with that use in mind. Many property tax laws allow exemptions and appraisal at current use rather than highest and best use.

high-rise A concept with no fixed definition except as contained within specific fire codes or building codes. In commercial real estate, it is generally understood by reference to what it is not. It is not a low-rise, which is a one- or two-story structure. It is not a midrise, which could be anything between three and six, perhaps eight stories high, depending on the community. A high-rise is anything taller than a midrise. The meaning of high-rise in Asheville, North Carolina, will be different than that in New York City or Chicago.

high-water mark The line on shore marked by the reach of the medium tide and which usually determines the boundary between private property and public property. Some jurisdictions limit private property to the shoreline, which is the highest reach of the waves inward to the land.

historic cost The cost of a structure when it was first built. Contrast with original cost, which is the price paid by the current owner.

historic district A designation given by local government to particular parts of town deemed historically significant or containing a large concentration of older buildings considered worthy of preservation in an historically accurate condition. Properties located in historic districts are usually the subject of dramatically increased scrutiny by planning and zoning authorities. The approval of an historic board may be required before a building permit for repairs or renovations for these properties is issued. Many are also eligible for federal historic preservation credits.

historic preservation credits A common name given to the IRS concept of rehabilitation tax credits, allowing tax credits equal to 10 percent of the cost of renovation, reconstruction, and restoration of buildings placed in service before 1936. A larger credit, 20 percent, is allowed for certified historic structures. There is a special increase for properties in the Gulf Opportunity Zone (named counties suffering hurricane damage in the 2005 hurricane season) with 13 percent allowed for pre–1936 buildings and 26 percent for certified historic structures. The properties do not need to have suffered any hurricane damage, as long as they are in the specifically named states and counties. See Form 3468, "Investment Credit," and the attached instructions, available at the IRS Web site, www.irs.gov.

holdback Retainage; amounts withheld from payment until certain goals have been reached.

> **Example:** *A lender holds back funding the balance of a loan until stabilized occupancy has been reached, or a homeowner holds back the final 10 percent of a construction contract price until after completion of all inspections.*

holder in due course A party who acquires possession of an instrument (usually a check, promissory note, or installment sale contract) after giving value for it, in good faith, and without notice that there are any defenses; the holder in due course takes free of any claims. It was common at one time for health clubs, home improvement companies, vinyl siding installers, and many others to provide financing for their customers. The company would then sell the promissory notes to a holder in due course. When the consumer complained of high-pressure sales tactics, services inferior to those represented, or shoddy workmanship and refused to continue making payments, the holder in due course would sue and win a judgment because it was not subject to any defenses against the original party. State legislation has now exempted purchasers of consumer contracts from holder in due course status, so that defenses good against the original party are also good against the purchaser of the paper. There is still a very lively industry in buying consumer paper, but purchasers now include clauses making the purchase with recourse, meaning that if the consumer asserts any defenses, the original contracting party must buy the paper back and deal with the consumer directly.

hold-harmless clause A contract provision that if one party is harmed, injured, subjected to claims, sued, or has a judgment against it, the other party to the contract will reimburse the first party for all such costs, expenses, and claims. It is a common clause in commercial leases, because the law imposes liability on both owners and occupiers of land for a wide variety of injuries caused by defects in or on the property. By the time an innocent landlord, tenant, or other party to a contract is able to obtain a dismissal of charges as to them, the bills for legal fees could amount to many tens of thousands of dollars. To control this situation, landlords usually require hold-harmless clauses from tenants. On the other hand, if the tenant has the superior bargaining position, the tenant will refuse to indemnify the landlord and, in addition, require the landlord to indemnify the tenant! Also called an indemnity clause.

holding company A company that owns or controls another company.

holding costs See *carrying charges.*

holding period (1) A time period important in the law of adverse possession, with its own peculiar rules for calculation. See *adverse possession* for more information. (2) A period of time one owns property, important in tax law for determining tax rates and benefits and for disallowance of some benefits.

Examples:

- Property exchanged in a 1031 exchange by related parties has a 2-year holding period before it can be sold; otherwise there will be adverse tax consequences.
- Banks have a 21-day holding period before sending taxpayer bank deposits to the IRS pursuant to a garnishment.
- Property sold after a holding period of 1 year or less will result in short-term capital gains or losses.
- Property sold after a holding period of more than 1 year will result in long-term capital gains or losses.
- Property sold after a holding period of more than 5 years will result in super-long-term capital gains or losses.
- Property acquired by inheritance will be treated as if it were held for longer than 1 year.

holdout A property owner who refuses to sell to a developer who is purchasing a number of separate parcels in order to put them together—an assemblage—for development. Sometimes the practice results in an offer vastly in excess of market price, because the holdout controls the success of the entire project. Other times, developers go back to the drawing board and redesign the project, leaving the holdout with no offer at all and what could turn into very unpleasant living conditions due to being surrounded by parking lots and 24-hour high-intensity lighting. Developers often avoid the problem by purchasing options rather than properties, so that if a critical property owner refuses to sell, the developer can abandon the entire project with a minimal expenditure.

holdover tenant A tenant who remains in possession of leased premises beyond the expiration of a lease term. Most commercial leases, and many residential leases, provide that a holdover tenant will be responsible for rent in an amount 125 to 200 percent greater than current market rents, but accepting the rent does not sacrifice any of the landlord's rights to obtain an eviction. (State laws may place a cap on the amount of increased rent charged to consumers.)

holiday A day set apart for commemorating an important event. The term is used often in contracts and leases when computing time, as when a certain number of days are allowed for an action, but if the due date falls on a weekend or holiday, it will be the next business day. Leases, in particular, limit delivery of certain services, such as heating and air conditioning, on weekends and holidays. The better practice is for the contract or lease to define the holidays meant by it. In the absence of such a definition, holidays will usually include federal holidays, when federal offices are closed, and may include state holidays when state offices are closed, if different.

holographic will A will written by the testator's hand but bearing no witness signatures. Regular wills must be witnessed, and the testator and all witnesses must sign in the presence of each other; otherwise the will is void. The holographic will is an exception recognized by some states. Contrast with nuncupative will, which is an *oral* will made shortly before death before witnesses and later reduced to writing by them.

home cooking A slang expression indicating the fear held by out-of-state or out-of-town defendants in a lawsuit that they will not receive a fair trial because of jury prejudice or because judges will not accord out-of-town lawyers the same credibility and leniency granted to local lawyers. This is the reason for most forum shopping clauses in contracts between local persons and large, usually nationwide, companies. The forum shopping clause requires any lawsuits to be brought in the other party's jurisdiction, thus presumably giving them the advantage of home cooking.

home equity conversion mortgage (HECM) An FHA-insured reverse mortgage loan allowing persons to borrow money against the equity in their home with no repayment usually necessary until after death. The money may be taken in one lump sum, or in payments over time.

The important elements are

- The borrower and any other current owners of the home must be aged 62 or over and live in the home as their principal residence.
- The home must be a single-family residence in a one- to four-unit building, a condominium, or part of a planned unit development (PUD). Some manufactured housing is eligible, but cooperative apartments are not.
- The home must be at least 1 year old and must meet HUD minimum standards, except that the HECM can be used to make necessary repairs.
- Applicants must discuss the program with a HUD-approved counselor before making any decision.
- Repayment in full is due (1) when the last surviving borrower dies, (2) when the home is sold, (3) when the borrowers permanently move elsewhere or fail to live in the home for 12 months, or (4) if there is a default in mortgage terms, such as failing to pay property taxes or keep the property insured or allowing it to deteriorate below HUD minimum standards.

home equity line of credit (HELOC) A revolving credit line secured by a mortgage on the borrower's residence. The borrower may draw down the loan—obtain funds—and then repay the principal later and restore the full borrowing ability for the maximum amount of the loan. The loan is often for amounts represented by the surplus above the first mortgage up to 125 percent of the appraised value of the home. These are high-risk loans because a foreclosure after default will not provide a sale price high enough to pay off the HELOC. As a result, the loans carry fairly high interest rates and, despite widespread advertising for 125 percent loans, only the most credit-worthy borrowers are able to secure the maximum loans. IRS rules allow the deduction of the interest on up to $100,000 of home equity line of credit debt.

home improvement loan A loan to make improvements on one's principal or secondary residence; may be a home equity line of credit or a traditional loan in a fixed amount. Both are secured by a second mortgage on the property.

home inspection Usually a professional, third-party inspection of a home prior to purchase in order to discover defects and report them to the purchaser.

home loan See *mortgage*.

Home Mortgage Disclosure Act A federal law requiring lenders with federally related loans to report the number of mortgage loan applications and the number of actual mortgage loans in different parts of their service areas. The Act is designed to shed light on discriminatory practices and thereby eliminate them. Reports are available on the Web site of the Federal Financial Institutions Examination Council, www.ffiec.gov/hmda.

home office An area of one's residence used for office purposes. Home offices may be eligible for tax benefits—see *home office tax deduction*. Some states allow real estate brokers to maintain their principal office in their homes under certain circumstances.

home office tax deduction The ability to deduct a portion of the cost and upkeep of a home because of the use of some space for business purposes. Generally,

- You must use some portion of the home regularly and exclusively as your principal place of business, or a place where you meet with clients, or
  - If using some structure separate from your home, you must merely use it in connection with your business.
  - If you are an employee, the use of a portion of your home for business must be for the convenience of your employer, not for your own convenience.
- The space must be used exclusively for business, but it does not have to be separated by walls or other partitions from other space.
- The deduction will be calculated using a percentage determined by comparing the space used for business purposes with the total space in the home. For example, a 150-square-foot room in a 3,000-square-foot house, or 150/3,000, will equate to 5 percent.
- Direct expenses used for work, materials, or repairs only in the business portion of the home are fully deductible; indirect expenses used for the entire home, such as utilities, cleaning, insurance, and real estate taxes can be deducted in a pro rata amount as determined from the percentage of space; unrelated expenses for nonbusiness parts of the home, such as painting other rooms, landscaping maintenance, or pool care are not deductible.
- Your use of home office business deductions cannot result in a business loss that will shelter other income.

For more information, see Publication 587, "Business Use of Your Home," available at the IRS Web site, www.irs.gov.

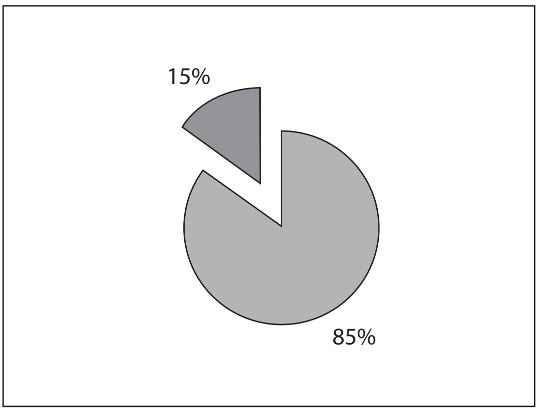
homeowners association An organization of the homeowners in a subdivision or a group of related subdivisions. In order to have the ability to collect dues and enforce rules, the association must be created by a legal document that was drawn up and filed before the first lot or home is sold, or by a legal document signed by 100 percent of the property owners and then filed in the public records.

- The associations sometimes own common areas. They also enforce restrictive covenants for the subdivision, such as setback lines, prohibitions against parking motor homes in driveways, restrictions on home-based businesses, and even architectural and landscaping restrictions. Often, one cannot cut trees, paint a house, add a porch, or make any other changes without first submitting detailed plans to an architectural review committee.

- The associations generally collect monthly dues in an amount barely sufficient to pay for common area maintenance and an annual party. Maintenance could be as minor as buying new flowers for the entrance or as pervasive as maintaining private roads in a gated community; siltation control and dredging for a private lake; costs of a security system and/or guard; and the care and upkeep of swimming pools, tennis courts, and other recreational facilities. In the absence of a fund for attorneys' fees, or the ability to assess additional dues for attorneys' fees in order to take rule breakers to court, the result is that rules generally go unenforced except as may be possible through peer pressure.
- Most homeowners associations have the right to impose fines and to place liens on property and force a sale if the fines are not paid, but this route is rarely successful without long and expensive litigation. Usually, the liens remain in place until the property is eventually sold, and then they are collected, but this has little deterrent value when trying to stop current rule violations.

homeownership rate The ratio of owner-occupied units to total residential units in a specified area.

> **Example:** *For an area with 20,000 units, 17,000 of them are owner-occupied and 3,000 are occupied with renters. This means that the ratio of owner-occupied units is 85 percent and the ratio of rentals is 15 percent.*



homeowner's insurance policy An insurance policy tailored for most homeowners with a package of coverages and endorsements designed to address most risks. Usually includes coverage for the main structure, a certain percentage of that in additional coverage for outbuildings, a certain percentage of additional coverage for contents, reimbursement for rental expenses and cleanup costs in the event of significant loss, and liability coverage in case anyone else is injured on the property as a result of a condition or defect of the property.

Homeowners Protection Act of 1998 (HOPA) Legislation passed in response to abuses in the private mortgage insurance (PMI) industry. Home purchasers who wish to borrow more than 80 percent of the purchase price of their property must usually purchase private mortgage insurance, which pays the lender in the event of default and a foreclosure. The purchaser pays the premiums through additional fees added to the monthly mortgage payment. Once the loan is paid to an amount less than 80 percent of the purchase price or the fair market value, there should be no need for the insurance. Despite this, PMI companies would continue to collect insurance premiums. The Act requires PMI companies to notify borrowers of their right to cancel the insurance when the loan is no more than 80 percent of the value of the home, and it requires them to automatically cancel the insurance when the loan is no more than 78 percent of the value of the home. The value is based on the purchase price or can be based on a recent appraisal if the borrower is willing to order and pay for an appraisal. There are exceptions to the cancellation rules, primarily when there has been a history of loan delinquencies. Also called PMI Cancellation Act.

homeowners' warranty program An insurance program offered by a subsidiary of the National Association of Home Builders. If purchased, the policy provides the buyer of a new home with a 10-year warranty against named physical defects.

home rule The power granted to local governments to pass ordinances regulating matters particularly local in nature. Some states have limited home rule, so matters that would seem to be local in nature must still be submitted to statewide referenda for approval and passage.

homestead The dwelling house and adjoining land forming the permanent residence of the head of household. Under modern law, a person's homestead is given a very specific definition within each state's statutes and is then granted protections from creditors and against excessive real estate taxes. The term homestead may also apply to the rights granted to a widow or widower to use real property for their remaining lives if they elect to take advantage of homestead laws rather than provisions made in a will. The protections may be unlimited, only up to a certain dollar value of equity, or limited in area. Each state's laws are different, and homestead may be defined differently in the various statutes within a state.

homogenous The same. The value of property in a homogenous neighborhood is relatively easy to determine because of ample evidence regarding recent sales of comparable sites.

HOPA See *Homeowners Protection Act of 1998*.

Horizontal Property Acts Name given by some jurisdictions to their statutes regulating the creation of condominiums.

hostile possession See *adverse possession*.

hotel A concept that seems relatively straightforward, as a place where people rent rooms for the night. Local business codes, tax laws, and zoning ordinances will all have their own definitions, however, contained within particular statutes. If in doubt regarding whether a particular use will be considered a hotel, one should refer to the appropriate laws.

house In real estate jargon, generally indicates a detached dwelling on a parcel of its own land.

house fluffer A decorator who recommends improvements and renovations designed to maximize a home's sale price.

house poor Also called land poor; a situation in which all of one's wealth is in the home (or land) and there is very little cash or income to pay for anything other than necessities.

house rules Everyday-conduct rules adopted by a condominium association to cover things such as hours of pool usage, number of allowable guest parking places, prohibitions against drying towels on balcony railings, and other such matters.

housing affordability index Developed by the National Association of REALTORS® to track the financial ability of consumers to buy homes. Many state organizations publish similar indices for their local markets. The benchmark is 100, sometimes expressed as 1.0. It means that a family earning the median income has exactly enough money to qualify for a mortgage to buy a median-priced home in that market. It assumes a 20 percent down payment, and that mortgage payments will not exceed 25 percent of income. A figure less than 100, or less than 1.0, means that the median income family cannot afford the median house. A greater figure means the median income family can afford a home more expensive than the median home. When a trend line is declining, it indicates that housing is becoming less affordable. Upwardly trending numbers mean housing is becoming more affordable. National figures may be obtained by going to the National Association of REALTORS® Web site, www.realtor.org, and clicking on Research, then Housing Statistics, and then Housing Affordability Index.

housing code A local ordinance that establishes minimum health and safety levels for existing housing. Contrast with building codes, which address new construction.

housing completions A statistic tracked by the U.S. Census Bureau (www.census.gov) and by many local real estate and builder organizations. It indicates the number of new homes made ready for occupancy within a certain time period, usually one month and one year.

housing counseling agency A nonprofit organization that provides advice and credit counseling to individuals wishing to purchase housing. Many low-income loan programs require completion of a housing counseling course as a condition of obtaining the loan.

housing finance agency A state or local organization that provides housing assistance through low-interest mortgage loans to qualifying buyers, including loans to fund down payment and closing costs due after the application of traditional mortgage money.

housing for the elderly Any project specifically designed for persons 55 years or older and marketed to that demographic group. Housing for the elderly is exempt from Fair Housing laws prohibiting discrimination against families.

housing permit See *building permit*.

housing starts A statistic tracked by the U.S. Census Bureau (www.census.gov) and by many local real estate and builder organizations; indicates the number of new homes on which construction has started within a certain time period, usually one month and one year.

housing stock The total number of dwelling units in a defined area.

Howey rule A rule of securities law articulated by the Supreme Court in the case of Howey v. Securities and Exchange Commission. The Howey company sold real estate interests in orange groves that it managed. As a practical matter, one could not buy the real estate and make any profit from it unless Howey handled all the details of cultivation, harvesting, and marketing. The SEC claimed Howey was selling "investment contracts" and therefore had to register with the SEC. The Supreme Court agreed.

The Howey rule, as it has come to be called, says that an investment contract is

1. A contract, transaction, or scheme whereby one person invests his or her money
2. in a common enterprise
3. led to expect profits solely from the efforts of a third party.

HUD The United States Department of Housing and Urban Development. This federal cabinet-level department has a wide variety of responsibilities, including

- Enforcing fair housing laws
- Assisting community development through block grants, loan guarantees, and disaster recovery assistance
- Regulating Fannie Mae and Freddie Mac
- Supporting health care through providing mortgage insurance for hospitals, nursing homes, and assisted living facilities
- Aiding Native Americans with specialized housing programs
- Educating citizens about hazards such as lead paint
- Overseeing the Federal Manufactured Housing Program
- Providing public housing assistance
- Making available housing counseling
- Administering a number of mortgage insurance programs for multifamily housing
- Providing mortgage insurance for single-family houses
- Handling witness relocation for people who have testified about crimes in their public or assisted housing buildings

HUD-Code home A manufactured home. The word "code" refers to the HUD regulation requiring all manufactured homes built after 1976 to meet the minimum requirements of the HUD Code, as contrasted with local building codes, which usually don't apply to manufactured housing.

HUD–1 form *See closing statement.*

hundred percent commission A real estate office arrangement in which the qualifying or managing broker keeps none of the real estate commission earned by the office, but instead pays 100 percent to the agent who secured the listing, the buyer, or the tenant. The broker makes his or her own money by competing against the agents, contrary to the typical practice in most other real estate offices. The broker also charges each agent a monthly fee to cover office space, advertising, and operating expenses and to provide a profit to the broker. This is in contrast to the more widespread practice in which commissions are paid to the broker, who is the only person legally authorized to enter into an agency agreement with another. The broker then splits the commission, paying some portion to the agent actually responsible for the work performed to earn the money.

hundred percent location Refers to the best location with the highest land value.

HVAC Heating, ventilation, and air conditioning.

hybrid mortgage A mortgage that combines the benefits of an adjustable-rate mortgage and a fixed-rate mortgage, such as adjustable rates in the early years and then an automatic conversion to fixed rates after a stated period of time. For example, the 5/25 (adjustable for 5 years and fixed for 25) and the 7/23.

hypothecate To give a security interest in specific real or personal property while retaining possession of the property. Contrast with a pawnshop, in which one surrenders possession of the security, or a loan against negotiable securities such as stocks and bonds, which could be sold by the borrower if the lender did not require possession in itself.

hypothetical condition A condition that does not currently exist in fact but has some probability of existing in the future. An appraisal may determine the value of property in its current condition, and then also determine a value based on a hypothetical condition, such as a state's plans to build a new highway exit at the property.

I

idem sonans Sounding the same, or alike. The rule of idem sonans is that absolute accuracy in spelling names is not required in a deed or other legal document, so long as the spellings sound the same and there is no intent to deceive. Without the rule, typographical errors in a deed would result in title not passing, creating a nightmare in writing title insurance and in litigation over competing claims.

Example: *Jayne Smith is idem sonans with Jane Smith.*

illiquidity (1) The condition of having insufficient cash to meet anticipated requirements, such as a business loan that is turned down because of the borrower's illiquidity, not because of problems with the borrower's credit rating or the value of the collateral. (2) The relative ease with which an asset can be converted to cash. The more difficult, the more illiquid the asset is.

impact fees Fees imposed by local government on new construction projects in order to compensate the government for the increased costs of delivering services. Impact fees can sometimes be extremely high, having the result of chilling development.

implied agency An agency relationship that arises out of the conduct of the parties and the impressions they give to the world, rather than because of a written or oral agreement. It is extremely rare to have an implied agency in real estate because of the rule that real estate contracts must be in writing, so agency relationships regarding real estate must also be in writing.

implied authority A principal grants the agent implied authority when there is an implied agency. See *implied agency*.

implied condition A provision not specifically spelled out in a contract, but considered an important underlying assumption of the parties. In most states, there is an implied condition in a new home sales contract that the home will be habitable and can be safely occupied in relative comfort with working hot and cold water with no leaks, a working sanitary sewer system, operational heating, and relative security from intruders.

implied contract A contract that arises out of the actions of the parties rather than any express words or writings by them. For example, when one names a price for a service and another accepts that service without any comment about the price, there is an implied contract to pay the quoted price. Almost all real estate transactions must have a written contract, by law, to be enforceable. Only the major terms need be in writing, however—the parties, a description of the property, a description of the estate granted (forever, for life, lease for years, etc.), and the consideration. Minor terms may be determined by reference to the actions of the parties, and so can be the subject of an implied contract.

implied easement An easement recognized by the law, although not expressly agreed upon by the parties or their predecessors in title. This situation usually arises when the owner of a parcel of land sells a portion to someone else. At the time of the sale, there might have been common roads, irrigation, or other uses. After the sale, courts will sometimes recognize an implied easement allowing all owners of the sold parcel to continue to enjoy those uses that technically belong to the other parcel, such as a right-of-way easement or an easement to use water from a lake or stream. This should not be confused with an easement of necessity, which generally requires that there be no other method of ingress or egress, for example. The better practice is to identify such matters ahead of time and include them in the purchase agreement and deed. Unfortunately, these issues usually arise long after the amicable relationship between the original seller and purchaser has deteriorated or the land has changed ownership and conflict results.

implied listing A listing agreement for the sale of property that arises out of the conduct of the parties, rather than any express written or oral contract between them. If there were an implied listing, then the listing broker would be entitled to the normal and customary commission available in the marketplace. As a practical matter, most states require listing agreements to be in writing to be enforceable and many states subject brokers to disciplinary action for entering into unwritten listing agreements.

implied notice A situation in which the law considers someone as having notice of a particular fact because they knew of sufficient other facts such as would cause a reasonable person to make inquiries and then gain additional knowledge.

> **Example:** *Zack finds a house he wants to buy. The owners live out of town, but every time Zack visits the house to review and inspect it, he sees evidence that someone is living in the house. Despite that, he signs a contract to buy the house, goes through with the closing, and is surprised when the current tenants tell him they have a 5-year lease on the property. Zack had implied notice of this fact. When he saw evidence of occupancy, he should have asked more questions and is not entitled to simply sit in ignorance and hope everything works out for the best.*

implied warranty of habitability (1) A legal doctrine that imposes on a landlord the obligation to make leased premises ready for occupancy in a safe, healthy, and nonhazardous condition and with the minimal amenities necessary for the provision of heat and water, although not including the utilities themselves. Many states have passed uniform landlord tenant laws, changing the implied warranty into an expressly articulated and defined legal obligation of the landlord. (2) State law may also imply similar warranties for new home builders.

impound account See *escrow account*.

improved land Land that has some improvement from its natural state, such as grading, added structures, planted timber, or crops.

improvements Valuable additions to land intended to increase its value.

imputed interest A common term for the IRS expression "unstated interest" or sometimes "original issue discount." It applies to the situation in which a promissory note calls for no interest or insufficient interest under the circumstances. In an audit, the IRS will calculate an interest rate, impute that to the transaction, and declare each year's imputed interest as additional income to the lender, on which the lender must pay income taxes, penalties, and interest. (The rules are found at 26 U.S.C. §1273, 1274 and 483.)

imputed notice The concept that notice to one person will be considered notice to another in a special relationship to the first person. For example, notice to an attorney is the same as notice to the attorney's client. In circumstances allowing oral contracts (usually not the case with real estate), if a seller makes an offer and a buyer accepts that offer via a communication to the seller's agent, then the acceptance makes a binding contract as of that moment. The seller cannot withdraw the offer before actually learning of the acceptance, because the contract has already been formed when the agent received the notice.

inactive license A mechanism under some state real estate licensing laws for a real estate agent to withdraw his or her name from licensing under any broker and hold the license in an inactive status until the agent is ready to return to active practice with the same, or another, broker. While on inactive status, the agent may not engage in activities requiring a real estate license and may not accept compensation for buying, selling, or referring buyers or sellers. Normally the inactive licensee is able to pay a smaller licensing fee and is relieved of some or all continuing education requirements during the inactive status.

inchoate Incomplete, impartial, not completed. Inchoate property rights include mechanics' and materialmen's liens, which come into possibility when work is commenced on a property but might never ripen into actual existence if all bills are paid for the work.

inclusionary zoning Zoning that requires inclusion of low- or moderate-income housing in new residential developments.

income (1) For IRS purposes, income is never precisely defined, but it apparently includes all moneys received from any sources unless specifically excluded by some IRS Code provision. (2) In business, all the revenues derived from the business, less all expenses. Many people use the word income interchangeably with revenues, but revenue implies a gross figure without deductions, and income implies an amount after expenses.

income and expense report See *financial statement*.

income approach A method of valuing real property by determining the net operating income over the useful life of the property and then translating that number to the present value via a discount rate. The present-value concept depends on the assumption that $1 today is worth more than 10 cents a year for the next 10 years, because of the purchasing power of the $1 to buy other investments that will yield a return over the next 10 years, and because of the effects of inflation, which decreases the amount of goods or services $1 will buy over the years. In order to compensate for these considerations, one would say that the value of 10 cents a year for the next 10 years is worth less than $1 today. How much less is the art and science of discounting.

income averaging A tax tool formerly given to all taxpayers and now available for just a few classes, such as farmers and fishermen. It allows taxpayers to average their income over 3 years and pay taxes on the average income, rather than no taxes one year and then high taxes at a high bracket in the next year, for example. (Calculated on Schedule J of IRS Form 1040.)

income capitalization approach See *income approach*.

income limits The maximum amount a family can earn and still be eligible for certain government housing assistance programs.

income-producing property Whether or not it actually produces a profit, a property that is intended to generate rental or other revenues for the owner.

income property Property purchased for the income it generates, such as rents.

income statement See *financial statement*.

income stream A steady flow of money from a property. When evaluating the property, one has to evaluate the strength and durability of the income stream.

> **Example:** *Is the tenant a national tenant with good financial strength, excellent prospects for continued health, and a 20-year lease on the property with rent adjustments annually to reflect cost-of-living increases, or is the tenant a start-up business with a 1-year lease in an area already saturated with similar businesses? Those two income streams are markedly different from each other.*

income tax A tax on income. A simple concept, but one that requires thousands of pages of IRS statutes, regulations, revenue rulings, and court interpretations to explain. See the IRS Web site at www.irs.gov.

incompetent Legally not able to make decisions, enter into contracts, or execute wills. This may be a result of a permanent mental impairment, as when one is declared non compos mentis or incompetent, or it may be for temporary reasons, such as a minor child's inability to make binding contracts.

incorporate To form a corporation by filing documents in the appropriate state authority, which may be one's own state or a corporation-friendly state such as Delaware. Once having formed the corporation, one must pay annual franchise taxes to the state for the privilege of existing as an artificial entity, and one must observe all the forms and conventions of corporate existence. In other words, the sole shareholder cannot form a corporation and then never have meetings, never sign documents in the corporate name, take all corporate money for personal use without accounting for it on the books and records of the corporation, and generally behave as if the corporation did not exist. If the shareholder(s) behave as if the corporation does not exist, then creditors may be able to *pierce the corporate veil* and seize assets of the individual shareholders.

incorporation by reference A method of including all the terms of one document into another document without having to spell everything out. Deeds will frequently make reference to restrictive covenants on file in the real estate records at a certain book and page number and incorporate them by reference into the deed itself. In that manner, any purchaser of the land is bound by the restrictive covenants, without getting into arguments about whether or not they had constructive notice because of the public filing. A renewal lease may be a one- or two-page instrument incorporating the original lease by reference, with the exception of changes to the rental rate and the term.

incorporeal rights Property rights that are inheritable but not tangible or visible, such as easements, licenses, mining claims, and franchises.

increment A portion, as of property or time. Developers build subdivisions in phases or increments, completing one section in order to gauge market demand before starting another section. Lawyers bill in minimum increments of 6, 10, 15, or 30 minutes depending on the particular lawyer and local custom, so a 3-minute phone call might be billed as any of these time increments.

incubator space Office, industrial, or high-tech space usually owned or managed by a local government development board and intended to provide an economical and supportive environment for new business start-ups. The rental rates are usually below market, there is some sharing of services and amenities, and mentoring services are provided. The new business is usually kicked out of the nest after it reaches a certain volume of business or after it achieves a previously approved and agreed upon business plan.

incumbrance Same as encumbrance. See *encumber*.

incurable obsolescence See *functional obsolescence*.

indemnification The process of shifting a loss from one party to another either because of an express agreement by the parties or because the law requires it under the circumstances.

> **Example:** *A purchaser of real estate discovers the property is subject to a lien that was placed against it prior to sale and pays the lien in order to avoid foreclosure; then the purchaser is entitled to indemnification, or reimbursement, from the prior owner who breached the warranties in the deed.*

indemnity clause See *hold-harmless clause*.

indenture deed A deed in which the buyer and seller bind themselves to certain obligations, such as an agreement that any liability for environmental cleanup expenses will be paid by the buyer and not the seller. Under ordinary circumstances, only the seller need sign a deed, because only the seller has any obligations regarding transferring good title. Leases are often called indentures, because they are a conveyance of an interest in real estate with both parties having continuing obligations.

The name indenture deed comes from ancient times, when such deeds were torn in half in an indented or jagged manner and could be proved by matching the two pieces.

independent appraisal An appraisal conducted by a disinterested person.

independent contractor One who is hired to reach a certain goal or perform a certain task, but who has the ability and the right to determine the methods and times for reaching that goal or task, so long as it is not illegal and is within the limits of the contract. This is an important concept because

1. Employers must take withholding taxes and pay matching taxes for employees but not independent contractors. The IRS has significantly tightened the definition of independent contractor so that most work relationships do not qualify. Under certain circumstances, real estate agents have been held to be employees for tax purposes.
2. If an independent contractor is negligent or commits an intentional tort, then the person who hired the contractor is not generally liable for the resulting damage. If an employee did the same thing, the employer would be liable so long as the employee was acting within the line and scope of his or her employment, which is usually a fairly easy hurdle for plaintiffs' lawyers to overcome.
3. An exception exists for the general rule of nonliability for the actions of an independent contractor, and that is in the area of real estate brokerage. Most real estate agents are independent contractors working for the broker. Real estate licensing laws, however, usually hold the broker responsible for the actions of agents.

index (1) A statistical indicator that measures changes in the economy in general or in particular areas. An example is the cost-of-living index. (2) A reference point against which measurements are taken for purposes of making future adjustments. An adjustable-rate mortgage might begin with an interest rate of 6 percent and provide that it will increase or decrease in a like percentage as the increase or decrease between today's quoted price for 10-year U.S. Treasury bonds and the price on the loan's annual anniversary date. We would say that 10-year T-bonds are the index.

Some leading loan indices include

- Wall Street Journal prime
- Federal discount rate
- Fed funds rate
- 11th District Cost of Funds
- 10-year Treasuries
- One-year LIBOR

index lease A lease that makes some or all of the rent dependent upon calculations with reference to some index, such as the cost-of-living index or the whole price index.

index loan See *adjustable-rate mortgage*.

index rate See *index*.

indicated value The bottom line in an appraisal; the appraiser's opinion of the current value of real propertyafter reconciliation of all methods and approaches to appraising the property.

indirect costs Costs of construction not directly related to the sticks and bricks. Examples include

- Real estate taxes
- Administrative costs
- Professional fees
- Insurance
- Lease-up expenses

individual retirement account (IRA) A retirement savings program entitling the individual to deduct contributions from gross income for purposes of calculating income taxes. The contributions are said to be from before-tax dollars.

Generally speaking, first-time home buyers can withdraw up to $10,000 from their IRA or Roth-IRA accounts, penalty free, in order to pay qualified home purchase expenses such as a down payment. Spouses can withdraw up to $20,000. There's a lifetime limit, though. Once you use up your distribution "free passes," you can't put the money back in your account and then use it again in the future. (For more information, see Tax Topic 428, "Roth IRA Distributions," and Publication 590, "Individual Retirement Accounts," available at the IRS Web site, www.irs.gov.)

indorsement See *endorsement*.

industrial broker One who specializes in industrial properties, also commonly called distribution properties.

industrial park An area zoned for industrial use. Often developed by local industrial development boards in order to provide low-cost real estate with shared rail lines or other amenities to attract employers to an area.

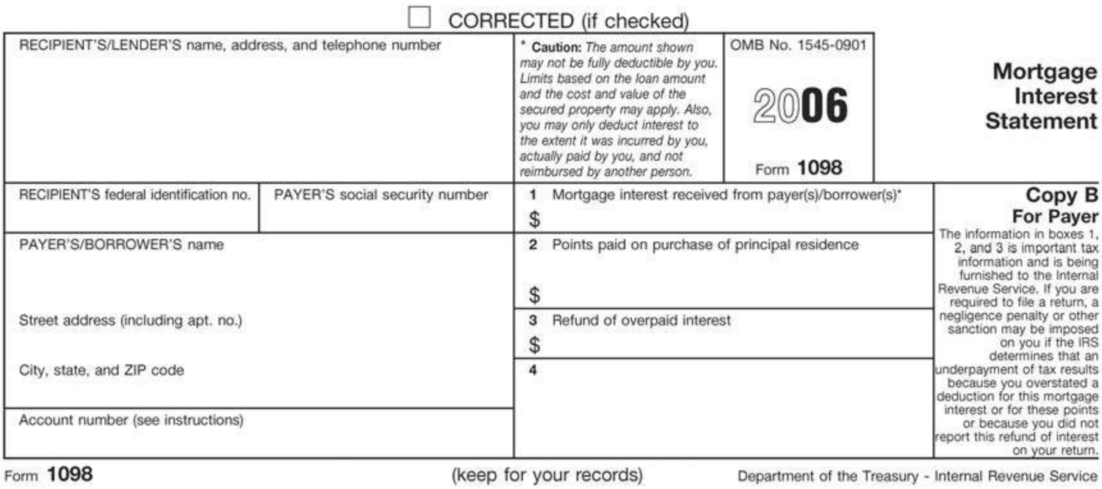
industrial property (1) Property designed for or used by companies or persons for manufacturing, warehousing, or assemblage of components. (2) In zoning, environmental, and building codes, the term "industrial property" will be defined within the statutes or codes for the specific purposes of those laws. The phrase may include uses not typically considered industrial and may exclude uses normally considered industrial.

in-fill development Property development within the boundaries of an area rather than moving outward and contributing to sprawl. The concept carries with it connotations of demolition of older buildings in order to make way for new construction, usually with a greater height and/or increased densities, rather than simply finally getting around to developing vacant land. In-fill development generally takes place in older neighborhoods outside the central business district but inside the ring of modern suburbs.

inflation A loss in the purchasing power of money. Inflation is generally measured by the consumer price index.

inflation guard An insurance policy endorsement that automatically increases coverage over time in order to keep up with the effects of inflation.

information reporting Reports provided to the IRS but which do not carry with them any liability for income taxes from the reporting entity. Partnerships and subchapter S-corporations must file information returns, closing agents must report real property purchase price information regarding the seller (Form 1098), and real estate brokers must report earnings of their agents (Form 1099).


CORRECTED (if checked)

RECIPIENT'S/LENDER'S name, address, and telephone number

* Caution: The amount shown may not be fully deductible by you. Limits based on the loan amount and the cost and value of the secured property may apply. Also, you may only deduct interest to the extent it was incurred by you, actually paid by you, and not reimbursed by another person.

OMB No. 1545-0901

2006

Form 1098

Mortgage Interest Statement

RECIPIENT'S federal identification no.

PAYER'S social security number

1 Mortgage interest received from payer(s)/borrower(s)* $

Copy B For Payer

PAYER'S/BORROWER'S name

2 Points paid on purchase of principal residence $

Street address (including apt. no.)

3 Refund of overpaid interest $

City, state, and ZIP code

4

Account number (see instructions)

The information in boxes 1, 2, and 3 is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if the IRS determines that an underpayment of tax results because you overstated a deduction for this mortgage interest or for these points or because you did not report this refund of interest on your return.

Form 1098 (keep for your records) Department of the Treasury - Internal Revenue Service

informed consent Consent given after being provided with fair and full disclosure of all the facts necessary to make an intelligent decision after weighing the relative pros and cons of the situation and the possibility of realistic alternatives. Real estate agents may sometimes represent both buyers and sellers in the same transaction if all parties agree after informed consent.

infrastructure The basic amenities and services that must be in place for a particular activity or pursuit. The infrastructure in a subdivision would consist of roads; storm sewers; and mechanisms for the transmission of water, waste products, electricity, telecommunications, and possibly natural gas. References to the infrastructure of a community might also include basic services, such as fire and police protection, schools, and libraries.

ingress A way of entry.

in gross See *appurtenance*.

inheritance tax See *estate tax*.

in-house sale One in which the listing broker also brought the buyer to the closing table. There is no other broker involved, and no one is entitled to a share of the commission except as the broker and the agent working for the broker may have agreed to between themselves.

initial interest rate In an adjustable-rate mortgage, the first interest rate charged.

injunction A court order requiring a party to do something, or to stop doing something, until further notice. If the party fails to perform according to the injunction, then the party will be required to appear in court, defend his or her actions, and show cause why he or she should not be held in contempt of court. If held in contempt, the party may be ordered to pay a fine, may be jailed until the contempt is cured, or could suffer both consequences.

Injunctions come in three varieties:

1. Temporary restraining order (TRO). Usually obtainable with little or no notice to the defendant, sometimes as quickly as within an hour or so if the complaining party can convince a judge that there is immediate risk of irreparable harm if the restraining order is not issued.
2. Preliminary injunction. Usually issued after a TRO, if the judge decides that an injunction should remain in effect until such time as there can be a full trial on the merits of the case. Failure to obtain a TRO does not mean a judge will not issue a preliminary injunction; it simply means the judge did not agree with the plaintiff's evaluation of the necessity for urgent action.
3. Final injunction. The final order issued by a court after it has heard all the evidence and legal arguments for and against the injunction. The order is a final order, from which the parties may appeal.

inner city Technically refers to the densely populated area just outside the central business district, but usually connotes a blighted area near the city center.

innocent misrepresentation See *fraud*.

innocent purchaser for value See *bona fide purchaser*. The words "for value" are sometimes added to bona fide purchaser, also, in order to emphasize the requirement for valuable consideration as opposed to mere "good consideration," which might consist of love and affection.

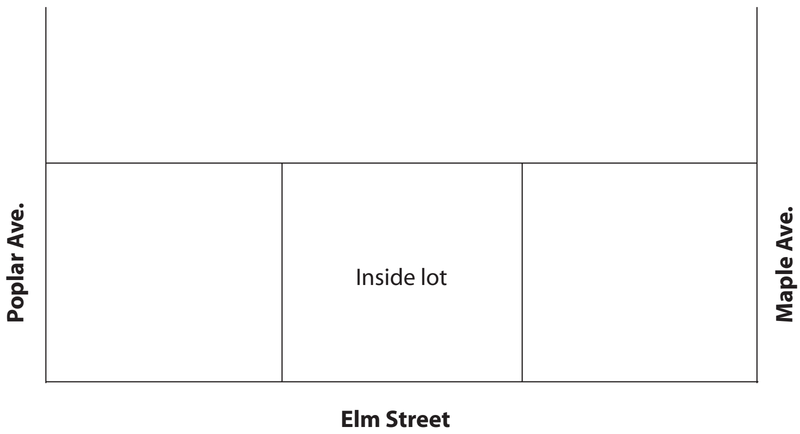
in perpetuity Forever.

inquiry notice That legal notice presumed to exist when a person is in command of sufficient facts as would cause a reasonable person to make further inquiries.

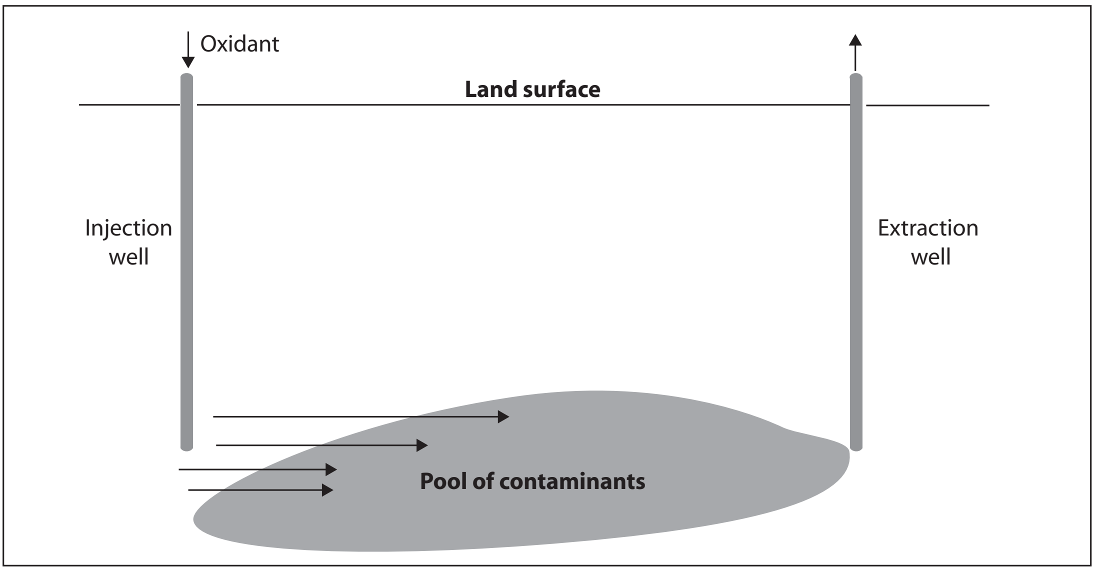
> **Example:** *If one buys real property and knows that it is occupied by someone other than the seller, then the buyer has an obligation to make inquiries to find out the character of the rights of the occupant, whether the occupant has a long-term lease, no lease at all, or is claiming title to the property as his or her own. But, having failed to make any inquiry, the purchaser cannot make a claim against the seller if the occupant claims rights in the property.*

in rem Meaning "against the thing." Lawsuits regarding title to real estate, or claims against real estate, are said to be in rem, so they must be filed in the state and county where the property is located.

inside lot Any subdivision lot except the corner lots.



in situ In place, on-site, such as EPA provisions for remediation in situ of contaminants rather than a requirement the contaminated soil be excavated and disposed of in an approved facility. To illustrate, the following is a diagram showing the process of chemical oxidation as an in situ solution to contamination.



Source: EPA.

insolvent The condition that exists when (1) one's liabilities are greater than assets, so that a complete liquidation even at fair market value would not pay all debts, or (2) one's current income is not sufficient to pay current bills, resulting in the need to contribute more cash to the organization or default on some payments.

installment contract A contract providing for payment of the purchase price to the seller over time. Installment contracts are given favorable treatment by the IRS (www.irs.gov), which allows the seller to declare gain only as the seller receives principal payments each year, rather than requiring the seller to immediately take into income the entire gross amount of the purchase price. Interest is counted as income in the year paid.

installment note A promissory note requiring payments over some period of time. Contrast with a single-pay loan, in which all principal and interest are due at maturity.

installment sale See *installment contract*.

Institute of Real Estate Management (IREM) An affiliate of the National Association of REALTORS®, this association (www.irem.org) is devoted to the needs of multifamily and commercial property managers.

institutional investor A large corporate investor in real estate and real estate securities, such as a pension fund, university, or insurance company.

institutional lender A federal- or state-regulated entity that loans money.

institutional lender financing Loan funds provided by a federal- or state-regulated entity that loans money as one of its core business activities. Contrast with seller financing, and with private investors who loan money for particular projects.

institutional property A zoning category authorizing schools, hospitals, and nursing homes.

instrument A written legal document.

insulation disclosure Also called the R-value rule, a Federal Trade Commission (FTC) requirement that persons selling new houses must disclose in their sales contracts the type, thickness, and R-value of the insulation installed in the house. Failure to make the required disclosure constitutes a deceptive trade practice and subjects the party to fines by the FTC.

insurable interest A right or interest in property or in the life of another that would cause the person to suffer a monetary loss if injury came to the property or to the other person. One must have an insurable interest in order to buy insurance, because the insurance is intended to compensate one for a loss.

insurable title A real estate title that can be insured by a title insurance company.

insurance A commercial contract agreeing to compensate one for loss in the event of specifically named or described risks.

insurance binder Evidence of property insurance coverage. Some insurance agents will bind coverage before receipt of payment for the premium. Lenders usually require proof that the premium has been paid for one year.

intangible property Something that is nonphysical, noncurrent, and exists only in connection with something else. Business goodwill is intangible property—it does not exist by itself; it cannot be seen, touched, smelled, or heard; and it cannot be sold separately from something else, because even the goodwill built up in a particular business name cannot be sold separately from the name. Intangible property is usually exempt from property taxes.

intelligent building A building equipped with the telecommunications infrastructure to easily and economically adapt to changing conditions through the use of automated control systems for heating, air conditioning, ventilation, lighting, power, and a variety of health, safety, and security conditions. Contrast with *smart home*, which usually refers to home automation systems that can be controlled by a centralized panel or device, or by dialing in to the control panel from outside the home.

intentional fraud A misrepresentation of a material fact which is intended to deceive another, does actually deceive another, and which causes harm to the one deceived. The law allows punitive damages. See also *fraud*.

interest Sums paid or earned for the use of money.

interest deductions The IRS allows various interest payments on loans secured by real property to be deducted: Some of these deductions are as follows:

- For business loans, 100 percent of the interest paid each year is a deductible expense.
- For homeowners, the interest on up to $1,000,000 of combined primary and secondary residence home mortgage debt can be deducted.
- Home equity line of credit interest is deductible up to the interest attributable to $100,000 of debt.
- Interest on loans to buy stock in a cooperative building are deductible within the same limits as home interest.
- Co-op apartment owners may deduct their pro rata share of mortgage interest on underlying debt on the building.

For more information see Publication 936, "Home Mortgage Interest Deduction," at the IRS Web site, www.irs.gov.

interest in property The extent of ownership in property.

interest-only loan A loan on which one pays periodic interest payments without any reduction in principal, and the entire principal balance is due and payable upon maturity of the note.

interest-only securities (IOs) Instruments created from collateralized mortgage obligations from which the monthly interest payments have been stripped out and converted into securities.

interest rate The cost of borrowing money, expressed as a percentage per year of the money borrowed.

interest rate cap In an adjustable-rate mortgage, a ceiling on the amount the interest rate may increase during any described period, such as one year, or over the lifetime of the loan.

interim financing A short-term loan arranged in order to buy time until something changes. At the end of the original construction loan period, a developer may wish to seek interim financing rather than permanent financing because of an expectation that interest rates will fall in the future, or because the developer's plans have changed and the property will be sold rather than retained. The problem with permanent financing and many development projects is the existence of very large prepayment penalties—one cannot simply refinance when interest rates go down or simply pay off the loan when there is a sale. A borrower may also seek interim financing because the borrower's financial strength, or that of income-producing property serving as collateral, is not currently sufficient to justify attractive financing terms.

interim use A use for property until it can be put to its highest and best use. Land that is not quite ready for development because of insufficient population densities may be used as a sales lot for manufactured housing, for example. An empty freestanding department or discount store might be used as a flea market.

interlocutory decree A court order that is provisional, temporary, or not final. Interlocutory decrees are usually not appealable unless one obtains permission from the court.

intermediate theory state See *hybrid theory state.*

intermediation The normal flow of money into financial institutions in the form of deposits, which are then loaned out to earn income. Contrast with disintermediation, which occurs when depositors take their money out of financial institutions because they can earn more money, relatively risk free, in other investments.

internal rate of return The annual rate of earnings on an investment equates the value of cash returns with the cash invested, taking into consideration the power of compounding interest. The following formula requires a trial-and-error method for solution. The fallacy with the method is its assumption that all cash flows are reinvested at the internal rate of return.

$$0 = CF_0 + \frac{CF_1}{(1+r)^1} + \frac{CF_2}{(1+r)^2} + \frac{CF_3}{(1+r)^3} + \frac{CF_n}{(1+r)^n}$$

Using this formula, CF is the cash flow in each period, with one subpart of the formula for each investment year until you reach n, the final year of the investment. You have to solve for R, the annual rate, by trial and error.

Internal Revenue Service (IRS) A bureau within the United States Department of the Treasury, the IRS is charged with the responsibility of collecting the taxes imposed by Congress. In furtherance of that responsibility, it provides a wealth of resources to assist law-abiding persons in understanding and complying with the complicated tax laws of the country. An excellent search engine at the IRS

Web site, www.irs.gov, gives access to thousands of online publications, forms, instructions, and even internal IRS manuals.

International Code Council A membership association (www.iccsafe.org) that develops the codes used in the construction of residential and commercial buildings.

International Council of Shopping Centers A global trade association (www.icsc.org) of the shopping center industry.

International Facility Management Association A global association (www.ifma.org) for facilities management. The organization defines facilities management as "a profession that encompasses multiple disciplines to ensure functionality of the built environment by integrating people, place, process and technology."

interpleader A legal proceeding in which one holding money and making no claim to it, but unsure as to which of several claimants should receive the money, pays the money into court. This is the normal route taken by an escrow agent or someone else holding earnest money when the buyer and seller both demand the earnest money. The escrow company will name both the buyer and seller as defendants; ask that it be reimbursed out of the money for its costs, usually a small attorney's fee and a court filing fee; and that it be allowed to exit from the fight. The buyer and seller then battle over the funds.

interrogatories A set of written questions by one party in a lawsuit to another party in the lawsuit, which must be answered under oath.

interstate A concept with many different interpretations depending on which federal law is being considered. Usually relevant in determining if an activity has a sufficient connection to interstate commerce, and thus the Commerce Clause of the Constitution, to warrant federal intrusion or oversight of the activity. Article I, Section 8, Clause 3 of the United States Constitution is known as the Commerce Clause and empowers the United States Congress "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." Representative areas of federal power may include

- Matters *in* interstate commerce
- Matters *affecting* interstate commerce
- Agencies and instrumentalities of interstate commerce
- Local laws that discriminate against interstate commerce
- Crimes that interfere with or obstruct interstate commerce

Interstate Land Sales Full Disclosure Act A federal law passed in response to abuses in the sale and development of large subdivision projects. Developers often took large deposits or even sold lots and then did not begin development for many years. The law requires registration of the subdivision with the federal government and mandates certain disclosures and rescission (contract cancellation) periods to consumers. Subdivisions of less than various size limits or those that will be completed within specified time limits are exempt, as are subdivisions in states certified as having substantially similar laws.

interval ownership Also called time-share ownership, in which a person shares ownership of property but is entitled to exclusive possession only for a particular time period each year.

inter vivos branch A theory that is applied to transactions entered into during one's lifetime. Some legal principles have differing rules depending on whether property was disposed of during the owner's lifetime or by provisions in the owner's will. The rule that applies for lifetime transactions is called the inter vivos branch of the rule.

inter vivos trust A trust established during the granting party's lifetime, rather than by virtue of the party's will.

intestate Without a will. All states have laws specifying the rules of intestate succession, or who will receive property, and in what shares, when someone dies without a will. If there is no one to inherit, then the property escheats to the state.

intestate succession The order of distribution of property when one dies without a will.

intrinsic value An appraisal term meaning an intangible value based on a property's proximity to certain features and amenities, such as good schools, health care, and shopping.

inventory (1) The total listings controlled by a real estate broker. (2) The total property for sale or lease in a defined area. (3) Property held for sale in the ordinary course of business or to be used in the manufacture of goods held for sale. (4) An itemized listing of personal property.

inverse condemnation A lawsuit brought against a government agency because of some action claimed to have damaged property to such a degree as to amount to a condemnation, even though there was no official exercise of the right of eminent domain and no compensation offered or paid to the property owner. This situation often comes up when governments increase the level or degree of regulation of property in such a manner as to make it economically incapable of development and thus worthless to the owner.

investment analysis A study of the potential return on a real estate investment to the owner, without reference to a potential sales price but strictly limited to the earnings and investment returns on the property. There are several different methods of analysis, some of which might be appropriate for particular properties and others not, or some of which are easier to use and favored by investors. The most common methods include

- Cash-on-cash return
- Payback period
- Internal rate of return

investment contract "Any contract, transaction or scheme whereby a person invests money in a common enterprise and is led to expect profits solely from the efforts of the promoter or third party," is the definition used by the Securities and Exchange Commission (SEC). Investment contracts related to real estate come within the definition. Nationwide litigation is currently under way to say that purchases of units in hotel condominiums—condotels—are also investment contracts. If something qualifies, it is possibly subject to registration, reporting, and disclosure requirements imposed by the SEC.

investment-grade property A term used to describe property felt to be of sufficient size and quality to be an attractive purchase target by one of the large institutional portfolios, such as retirement funds or insurance companies.

investment interest An IRS phrase meaning the interest incurred on debt for an income-producing property. Investment interest is deductible only to the extent of investment income; you can't use investment interest to shelter other income. Unused investment interest may be carried over to subsequent years.

investment life cycle The time period from acquisition of an investment to its final disposition.

investment property Property held for the production of income or for an increase in value, as opposed to property held as a personal residence, use in a business, used for pleasure, or held in inventory.

investment value The value of property to a particular investor, aside from the property's general market value. Often encountered when a person sells appreciated real estate and must identify another property to purchase within 45 days in order to take advantage of the 1031 tax exchange vehicle for deferring taxes. Because of the short time limits, that investor is willing to pay a higher price than someone else, because the investor must buy something in order to avoid paying income taxes on the earlier sale.

investor One who uses his or her money to purchase property in the expectation of earning periodic cash flows from the property, making a profit on the eventual resale of the property, or both.

involuntary alienation Loss of property for nonpayment of debts, such as foreclosure, tax sale, or execution on a judgment.

involuntary conversion An IRS term meaning the involuntary loss of property through destruction or condemnation. The event can be a tax loss or a tax gain, depending on any proceeds received as a result of the involuntary conversion. If there is a gain, the taxes can be deferred. See *condemnation*.

involuntary lien A lien on real estate that results without the property owners' voluntary cooperation in the placement of the lien. Examples include tax liens and judgment liens. Contrast with a mortgage, which is voluntary.

ironclad agreement A mythical contract that can't be broken—like the Loch Ness Monster, often reported but never confirmed. As a practical matter, there is no agreement that can't be broken if the parties have sufficient resources, well-qualified legal talent, and plenty of time.

irrevocable Not capable of being revoked. An offer to sell at a certain price can be revoked at any time before acceptance. An irrevocable offer to sell cannot be revoked, but it should always have an expiration date.

ISO 14000 Refers to a series of voluntary standards for implementation and auditing of environmental controls previously agreed upon by a community or required by statute. The term is internationally recognized. In the United States, the Environmental Protection Agency (EPA) refers to the standards as Voluntary Environmental Management Systems/ISO 14001.

J

jeopardy (1) Danger, hazard, peril. Mortgaged property is said to be in jeopardy because it might be taken by foreclosure. (2) Subjected to the possibility of criminal punishment, including fines. The constitutional protection against double jeopardy has been held to apply to fines, such as might be levied against a company for violation of housing discrimination laws.

joint and several liability Having full liability for the whole of a debt or injury. Comakers on promissory notes have joint and several liability, so that the lender may collect the entire amount due from only one borrower and is not limited to collecting one-half from each borrower. The following usually have joint and several liability unless required otherwise by a specific state law or contractual agreement:

- Partners in a general partnership
- Taxes owed by husbands and wives who file joint returns
- Multiple persons who commit one wrong and injure another
- Tenants under one lease, such as roommates
- Cosigners on promissory notes
- Cosigners on guarantee agreements

joint ownership Ownership of property by two or more people or entities. It includes tenants in common, joint tenants with right of survivorship, tenants by the entireties, and community property interests.

joint tenancy A short version of the term "joint tenants with right of survivorship." A method of taking title to real property; commonly used by husbands and wives, or by others, as an estate planning tool. The parties each own a fractional share and, at the same time, own the whole of the property. If a joint tenant dies, the others do not inherit that tenant's share, but simply see the removal of an obstacle in the way of taking everything. This is a subtle point, but it is the heart of the estate planning tool—no one inherits anything as a result of the death of the other joint tenant(s). As a result, the property does not pass through probate and cannot be used to satisfy claims against the estate of the decedent. However,

- The property may be includable in one owner's estate for purposes of calculating estate taxes. The rules are different depending on whether the parties were married or not.

- A joint tenancy may be destroyed if one owner transfers his or her interest to a third party. If that happens, the new owner becomes a tenant in common, not a joint tenant. If there were originally more than two joint tenants, the remaining ones may still be joint tenants as to each other's interest.

joint venture A legal entity somewhat similar to a partnership, except that its purpose is the pursuit of a single transaction for the mutual benefit of both joint venturers. Each joint venturer has equal rights of direction and control. For tax purposes, the joint venture is treated as a partnership and must file a partnership tax return.

judge-made law Legal decisions by appellate courts that are binding on all future generations unless overruled by a later appellate court, but which are directly contradictory to specific statutes or earlier case authority. This happens rather often in real estate law, much of which arose out of peculiarities of life in the Middle Ages and before. When faced with a situation that would result in a seemingly unfair conclusion under applicable principles of law, the judges sometimes simply change the law.

judgment An order of a court.

judgment creditor One who has obtained a judgment against another. The original claim did not have to arise out of a debt—it could have been an automobile accident, a promissory note, an award in a divorce case, or anything at all.

judgment debtor One who has had a judgment rendered against him or her. The original claim did not have to arise out of a debt—it could have been an automobile accident, a promissory note, an award in a divorce case, or something similar.

judgment, foreign A judgment taken in another state. Once the judgment has been entered and becomes final in the other state, it may be domesticated—filed of record—in any other state where the debtor may have property. The judgment debtor may not relitigate the original issues at that time, unless there are very extraordinary circumstances.

judgment in rem A judgment against property, rather than against a person. One example would be a judgment establishing a right-of-way easement in favor of one property and over another property. The judgment binds all people to the extent of their interaction with the property.

judgment lien A lien on all property of a judgment debtor as a result of the entry of a judgment, the failure to appeal, and the filing of some document in the public records as evidence of the judgment.

judgment-proof Having no assets out of which a judgment may be satisfied. In some states, a judgment debtor may have substantial assets, but they are legally beyond the reach of creditors. In other states, judgments can remain liens against property for as long as 20 years. Today's judgment-proof debtor may be wealthy in 5 or 10 years and have assets that can be seized at that time.

judicial foreclosure A foreclosure mechanism used in some states. An action must be filed with a court to begin the foreclosure process. The court will then fix the amount of the debt and order foreclosure of the property.

judicial landmark A tool available in some states for marking court-established boundary line corners after a lawsuit between contiguous property owners. The applicable statute will usually specify a certain size monument, such as a concrete block at least 12 inches per side; a depth at which it should be buried; and a requirement for an engraved notation that indicates that it is a judicial landmark, the date set, and the name of the surveyor setting the landmark.

jumbo mortgage A loan in an amount greater than the size limits for Fannie Mae or Freddie Mac purchase. The loans must remain in the lender's portfolio or be sold to other investors. Because the loans cannot be sold easily, some banks charge a higher interest rate for them.

junior lien or mortgage Refers to the priority of payment if a property must be liquidated to satisfy the debts against it. The first recorded lien or mortgage will be paid first out of sale proceeds, up to the entire amount of the debt, including principal, interests, legal fees, and expenses. If there is any money remaining, junior lienholders (which include junior mortgages) will be paid in full in the order of their priority until the money runs out.

junk fees A popular term for lender fees and expenses that are disguised additional profit. They are usually relatively small, but can add up to significant income if enough borrowers pay them. Sample junk fees are loan processing, document handling, fund maintenance, review appraisal, underwriting review, and other such items.

jurisdiction Power. The concept that a court or government authority may exercise control over a person or property because of the location of the property, the activities of a person within a geographic area, or a person's request for assistance from that authority, thereby voluntarily subjecting themselves to jurisdiction.

jury trial, right to In many states, there is no right to a jury trial on disputes relating to real property. This is because of rules with their roots in English courts dating back to the time of the Norman invasion in 1066. Before making any litigation decisions based on what you think a jury of your peers would decide, be sure to see if you are entitled to a jury.

just compensation A requirement of the United States Constitution that no owner be deprived of private property without payment of a value which is fair to the owner, and fair to the taxpayers who must pay the compensation. This concept forms the basis of eminent domain law and condemnations.

just title A title that seemed to be proper and legal, although defective in some regard. In some states, persons with a defective title may gain full title to the property if they use the property for a certain period of time, claim it as their own, and have such title such as would give rise to a good-faith belief that the property was theirs.

K

Kelo One of the most important real estate cases of modern history, *Kelo v. City of New London* tested the limits of the government's right to condemn private property for public use, and concluded with the United States Supreme Court granting wide latitude to local government.

> The issue involved a desire by the city of New London, Connecticut, to condemn 90 acres of private property and offer it to a developer as part of a larger urban revitalization plan. Historically, eminent domain has been used to build roads, schools, and public buildings. In the Kelo case, the overall development plans called for a resort hotel and conference center, retail space, residences, and a new state park.
>
> The case finally ended up in the United States Supreme Court. On June 23, 2005, Justice Stephens wrote the majority opinion, finding in favor of the city of New London. Justice Stephens said that local governments should be given wide latitude in local condemnation cases. "The city has carefully formulated a development plan that it believes will provide appreciable benefits to the community, including, but not limited to, new jobs and increased tax revenue." Under the particular facts of the Kelo case, the condemnation was for a permissible public purpose and not a private purpose.

There have been two types of backlash to the *Kelo* decision.

> Many local governments immediately passed laws prohibiting the use of eminent domain for private development. The Supreme Court decision left open the likelihood that such laws would be constitutional and, in fact, practically invited states to pass new laws.
>
> Small towns across America began plans to condemn undeveloped property owned by Wal-Mart within their borders. City leaders and citizens claimed it would be for the public good, because a Wal-Mart store where planned would be a blight on the community, much the same as the 90 acres in New London was considered a blight. (At this writing, it is too early in the judicial process to see where this will go.)

key tenant See *anchor tenant*.

kickback An illegal fee or rebate paid to someone in order to gain that person's decision or recommendation for the award of business. Under the Real Estate Settlement and Procedure Act (RESPA), federal law prohibits kickbacks to real estate agents from mortgage companies.

kiosk A small, freestanding retail location within the confines of another business or in the common areas of a shopping center. Kiosks represent a method of significantly expanding real estate income without raising rents or building more space. The term is sometimes used to denote only self-service locations, with the attended sites called carts. (For more information see the Web site of the Self Service and Kiosk Association, www.selfservice.org.)

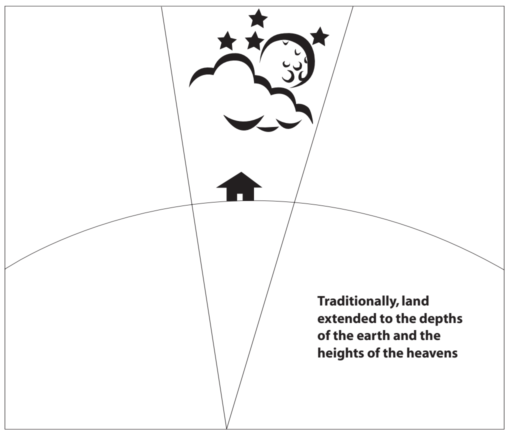
kit homes Structures that arrive as prefabricated components to be erected on-site. Includes the familiar log cabin kits, geodesic dome houses, and post and beam houses.

L

laches A doctrine of equity, or fairness, holding that people cannot sleep on their rights and then, after the passage of time and possibly the intervening claims of other people, suddenly demand that the law fix everything. The concept is similar to a statute of limitations, except that it has no fixed time period and is totally dependent on the particular circumstances of a case.

> **Example:** *Ruby plants 10 pecan trees on the wrong side of her property line with Jake. Jake knew this when the first shovel of dirt was turned, but he remained silent. Seven years later Ruby begins harvesting pecans to supplement her income, but Jake sues her and claims the pecans belong to him. Most likely the court will rule that Jake's claims are barred by laches and Ruby may harvest pecans until the trees stop bearing.*

land In the law, the surface of the earth, descending down in a cone shape to the center of the world and upward to the heavens, along with all natural things thereon, such as minerals, water, vegetation, and rights to the air. This is less than the concept of real property, which includes land but also all rights in and to land or its use, and all artificial things attached to the land.



land bank Land purchased and held for future development.

land contract Also called a bond for title, land sale contract or contract for deed. It is a financing arrangement for real property, in which the seller holds the financing and the legal title and does not give the buyer a deed until all payments have been made in full. For many people with the inability to secure financing, it is the only practical way for them to own a home. The practice is perilous, though, and could result in the loss of the property, and substantial money spent over the years, simply because of one late payment.

land court A specialized court to hear real estate matters. The details vary from state to state.

land description Any instrument granting or relinquishing rights in real estate must contain a description of the real estate. The description must be precise enough so that a stranger, relying only on the writing in the instrument and perhaps some training as a surveyor, could go out in the world