

## Glossary of Commonly Used Terms

**1031 EXCHANGE** - A method of deferring capital gains tax on the sale of real property by exchanging one property (relinquished property) for another property of "like-kind" (replacement property) as contemplated under §1031 of the Internal Revenue Code.

**ACCELERATION CLAUSE** - A clause in a deed of trust which gives the lender the right to demand payment in full upon the happening of some event (such as transfer of an interest in the property or other event that endangers the security of the loan).

**AD VALOREM TAX** - A tax on the estimated value of real property or personal property.

**ADVERSE POSSESSION** - A method of acquiring ownership in land by open, notorious, exclusive, and hostile possession of private real property for the statutory period (typically 20 years in North Carolina).

**ADVERSE POSSESSION UNDER COLOR OF TITLE** - Similar to Adverse Possession, but where the claimant has acquired a defective title. The statutory period for Adverse Possession under color of title is 7 years in North Carolina.

**AFFIDAVIT** - A statement or declaration sworn before a notary public or other officer with authority to administer an oath.

**AFFIDAVIT REGARDING LIENS** - *See LIEN WAIVER.*

**AMERICAN LAND TITLE ASSOCIATION or ALTA** - An organization composed of title insurance companies which has adopted certain insurance policy forms to standardize coverage nationally.

**BACK TITLE LETTER** - *See Prior Title Letter.*

**BENEFICIARY** - (1) One for whose benefit a trust is created; or (2) a lender on a deed of trust.

**BINDER** - A report issued by a title insurance company setting forth the condition of title to certain property as of a certain date, and also setting forth conditions, which, if satisfied, will cause a title insurance policy to be issued. Also called a Title Commitment.

**CERTIFICATE OF ORIGIN** - A certificate issued by the Department of Motor Vehicles establishing a preliminary title for a mobile home while in transport to the eventual buyer and prior to the issuance of a motor vehicle title.

**CONDOMINIUM** - a structure of 2 or more units, the interior space of which is individually owned. The balance of the property is owned in common by the unit owners and is called *common area*.

**CONVENTIONAL LOAN** - a loan not obtained through or under a government insured loan program (i.e. FHA or VA).

**DEED** - An instrument given to pass title in land to another. *See also, Warranty Deed and Quitclaim Deed.*

**DEED IN LIEU OF FORECLOSURE** - a deed given by a debtor/borrower to a lender to avoid a foreclosure. The validity of the deed depends on some degree of "fairness" under the circumstances and the adequacy of consideration will be considered.

**DEED OF TRUST** - Used in place of a mortgage, a deed of trust is an instrument by which the property is transferred to a Trustee by the borrower for the benefit of the Beneficiary (Lender).

**EASEMENT** - A right created by grant, reservation, agreement, prescription or necessity which one has in the land(s) of another. Easements can be either (1) for the benefit of land (appurtenant) such as the right to cross tract A to get to tract B; or (2) for the benefit of another person or entity (in gross) such as a utility easement.

**ENCROACHMENT** - Generally, the placement of improvements onto the property of another without authority.

**EXCISE TAX** - (also called Deed Stamps, Transfer Taxes or Tax Stamps) - a state tax on the transfer of real property based on the sale price.

**EXECUTOR / EXECUTRIX** - One who is appointed in a will to carry out the terms of the will. An Executrix is a female Executor.

**F.H.A.** - Federal Housing Authority. A federal agency that insures first mortgages, enabling lenders to loan a very high percentage of the sale price, typically for first time homebuyers or others who qualify.

**FINANCING STATEMENT** - Also called a UCC, a recorded instrument securing a lien against personal property.

**FIXTURES** - Personal property which is attached to real property, and is legally treated as real property while it

is so attached. Fixtures pass with the title to real property.

**FORECLOSURE** - a legal proceeding (either in or out of court) to extinguish all right, title and interest of a owner/borrower in real property in order to sell the property to satisfy a lien against it.

**FUTURE ADVANCE CLAUSE** - A clause in a deed of trust which allows the borrower to borrow additional sums at a future time, secured under the same deed of trust and by the same property.

**GRANTEE** - One to whom property is granted or conveyed.

**GRANTOR** - One who conveys or transfers real property.

**GIFT DEED** - A deed for no or only nominal consideration. Often evidenced by language of gift ("...for love and affection...") or by failure to pay excise tax. Must be recorded within 2 years of execution to be a valid conveyance.

**HYPOTHECATED SECURITY** - A security interest given by the owner of real property to secure the debt of another. Owner will sign the deed of trust but will not be a named borrower on the note. May be unenforceable unless the non-borrowing owner receives a valid consideration in return for giving a security interest in his property. (*See* Hypothecated Security Addendum)

**HYPOTHECATED SECURITY ADDENDUM** - An addendum to a deed of trust through which a non-borrowing owner acknowledges a valuable consideration and waives his rights and remedies in default just as if he had executed the Note.

**INDEMNITY AGREEMENT** - A contract by which one party agrees to repay the other in the event of any loss or damage the latter may suffer.

**INCUMBRANCE** (Encumbrance) - Any claim, lien or liability attached to and binding real property that exists in one other than the owner.

**INSTALLMENT SALE CONTRACT** - A sales contract under which the seller retains legal title to the property until paid in full. The buyer acquires equitable title during the term of the contract. Contrast with a sale, secured by a purchase money note to the seller in which the buyer acquires legal title and then conveys equitable title to a trustee under a deed of trust for the benefit of the seller.

**JUDGMENT** - The decision of a court of law. Money judgments, once docketed in the county in which the real property is located, become a lien on the real property of

the defendant. Once entered, a judgment is valid until paid but it expires after 10 years, unless renewed.

**JUNIOR LIEN** - A lien which is subordinate to a prior lien.

**JUNIOR MORTGAGE** - Any mortgage of lesser priority to another mortgage. For example, an equity line deed of trust recorded after a first deed of trust.

**LEASE** - An agreement by which an owner of real property (lessor) gives the right of possession to another (lessee), for a specified period of time (term) and for a specified consideration (rent). In North Carolina, a lease for a term in excess of 3 years must be recorded.

**LIEN WAIVER** - For real estate purposes, a waiver of the right of a builder, contractor or materials provider to file a mechanic's or materialmen's lien for services or materials provided to or on real property.

**LIEN SUBORDINATION** - In contrast to a lien waiver, a contractor or materials provider can simply subordinate its lien to the lien of a lender such that any exercise of its lien rights would be subject to the lien of the deed of trust. (*See also* - Subordination Agreement)

**LIFE ESTATE** - An estate in real property for the life of a living person. On the death of that person, the estate reverts back to the grantor or to a third party (remainderman). For example, A grants Blackacre to B, "for life". B is entitled to possession of Blackacre until his death at which time, the estate reverts to A or A's heirs.

**LIKE-KIND EXCHANGE** - *See* 1031 Exchange above.

**LIS PENDENS** - A legal notice docketed with the Clerk of Court to give notice of litigation involving real property. Anyone acquiring an interest in the subject property after the docketing of a lis pendens takes subject to the outcome of the litigation. A lis pendens is an incumbrance on real property and should always be reported to the title insurer.

**LITTORAL RIGHTS** - *See* Riparian Rights.

**LOAN POLICY** - A title insurance policy given to insure the lender who holds a security interest in real property.

**MECHANIC'S LIEN** - A lien for the purpose of securing payment for labor or materials furnished in construction or repair of improvements to real property.

**MORTGAGEE** - A lender.

**MORTGAGOR** - A borrower and grantor of an interest in real property given to secure a debt.

**OWNER'S POLICY** - A title insurance policy given to the owner of real property.

**PLAT** - A map showing the division of land into lots or parcels, as in a subdivision.

**POWER OF ATTORNEY** - A legal document in which one person (principal) enables another (attorney in fact) to act on her behalf. In order to be valid for the transfer of real property, the power of attorney must be recorded in the county in which the real property lies and must specifically authorize the type of transaction (i.e. the power to make a gift, the power to mortgage or sell).

**PRIOR TITLE LETTER** - A letter given by a title insurance company to an attorney, giving the attorney the condition of title as of a certain date. The attorney then begins his/her examination as of that date.

**QUITCLAIM DEED** (a.k.a. Non-Warranty Deed) - A deed without warranty of title in the Grantor (seller). Frequently used as a release of all right, title and interest in real property.

**REISSUE RATE** - A charge for a title insurance policy if a previous policy for the same real property was issued within a specified period. The reissue rate is less than the original title premium rate.

**RELEASE** - An instrument releasing property from the lien of a mortgage, judgment, etc.

**RESPA** (Real Estate Settlement Procedures Act) - A federal statute requiring disclosure of certain costs in the sale of residential (one to four family) improved property which is to be financed by a federally insured lender.

**RESTRICTIVE COVENANTS** - Provisions or restrictions set forth by a former owner (in a deed or declaration of restrictions) which limit or restrict the use of land.

**RIPARIAN RIGHTS** - A set of rights vested in the owner of lands immediately adjacent to a river or stream. Term often used to also describe so-called Littoral rights that vest in owners whose property is adjacent to lakes or oceans. Riparian rights include the right to the reasonable use of the water and the exclusive right to access the water from the subject property.

**SHORT FORM LOAN POLICY** - An ALTA title policy for lenders which 1) incorporates by reference the standard ALTA Loan Policy; and 2) adds certain coverages that are generally required by lenders.

**SUBORDINATION AGREEMENT** - An agreement through which an incumbrance is made subject to a junior incumbrance. For example, a 1<sup>st</sup> mortgage is refinanced

after a 2<sup>nd</sup> mortgage is recorded. The 2<sup>nd</sup> mortgagee might execute a subordination agreement to give the new refinance loan 1<sup>st</sup> lien position though it was recorded after the 2<sup>nd</sup> mortgage.

**SUBSTITUTION OF TRUSTEE** - A document which is recorded to change the name of the trustee on a deed of trust. It is required in order for a new trustee to validly execute any documents relating to the deed of trust (e.g. a trustee's release or any foreclosure documents).

**TACKING** - Beginning a title examination from the end date of a previous search or from the previous policy date.

**V.A. (Veteran's Administration) LOANS** - Home loans that are insured by the Veteran's Administration for the purpose of allowing veterans to buy homes with little or no down payment.

**WARRANTY DEED** - A deed containing warranties by the Grantor (seller) of the title to the real property. If the title proves defective, the Grantee (buyer) may attempt to recover from the Grantor under the warranties.