

Real Estate Terms

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Disclosure for Foreclosure and Equity Sharing Techniques

The Foreclosure Training course or foreclosure content presented in other Company trainings, products and services are intended to provide broad-based experiential real estate foreclosure and pre-foreclosure training techniques that are applicable in the majority of geographic regions where we conduct our classes. This information is in no way intended to provide legal advice or detailed guidance on how to properly conduct foreclosure and/or pre-foreclosure activity in your state. As with any regulated activity, we strongly recommend that you consult with an attorney.

There is currently a growing group of states¹ which have enacted legislation that could impact how you participate in foreclosure and/or pre-foreclosure activities in those states. Generally speaking, such legislation may regulate both consulting/marketing activities and activities where you in fact purchase the property and/or re-convey it back to the owner. The laws tend to impose detailed contractual requirements and disclaimers along with a right of cancellation for a mandated time period. It is not uncommon for these laws to curtail certain conduct and limit the compensation/profit you may receive in connection with foreclosure and/or pre-foreclosure activities. Finally, many of these laws could be interpreted to prohibit you from taking an interest in a property under certain circumstances, and as such, could hinder techniques we teach to protect the investor. Violations of these laws typically result in both civil and criminal penalties, including multiple damages, fines and terms of imprisonment.

¹ As of April 15, 2008 we are aware of 20 states which have enacted legislation: CA, CO, District of Columbia, GA, ID, IL, IN, MA, MD, ME, MO, MN, NE, NH, NV, NY, OR, RI, VA and WA.

Real Estate Terms

A

Accelerated Depreciation - A method of cost write-off in accounting practice in which allowances for depreciation of a wasting asset are greater in early years and decline according to a formula.

Accelerated Capital Cost and Recovery System (ACRS) - The methods for determining depreciation allowances required by the Economic Recovery Tax Act of 1981.

Acceleration Clause - A condition in a loan contract or a mortgage note that permits the lender to require immediate repayment of the entire balance of the loan if the contract is breached or conditions for repayment occur.

Accrual Accounting - An accounting system where income is realized when earned, not when received, and expenses are recorded when incurred, not when paid.

Adjustable Mortgage Loan (AML) - A flexible mortgage instrument approved by the Federal Home Loan Bank Board for use by federal savings and loan associations which allows adjustment of the interest rate as often as monthly based upon changes on an interest rate index.

Adjusted Basis - The difference between the cost of the property and total depreciation claimed in prior years.

Adjusted Net Operating Income - Net operating income plus reserve for replacements.

Adverse Action - The refusal to grant credit more or less on terms requested by the applicant; or the refusal to increase the amount of credit available to an existing borrower, when the borrower has requested an increase in accordance with standard procedures.

Annual Loan Constant - The total annual payments of principal and interest, annual debt service, on a mortgage with level-payment amortization schedule, expressed as a percentage of the initial principal amount of the loan.

Annuity Capitalization - A process of capitalization in which the income from a property is converted to a present value under the assumption that the income stream will consist of a finite number of equal payments.

Appraisal - A supported, defended, estimate of the value of property rights as of a given date.

ASA - The designation awarded by the American Society of Appraisers (ASA), to its senior members who appraise various types of personal property as well as real property.

Assignee - The one to whom a mortgage and mortgagee note is transferred and assigned. (The Purchaser)

Assignor - The one who is transferring and assigning a mortgage and mortgage note. (The Mortgagee)

B

Band of Investment Analysis - A method of deriving an overall rate based on the relative proportion of debt and equity represented in similar transactions.

Basic (Export) Activity - Exchange of goods produced locally for money earned outside the community or metropolitan area.

Basket Clause - A regulatory provision allowing financial institutions to make a certain proportion of loans or investments that would otherwise be illegal.

Blanket Mortgage - A development in which several properties are secured by one mortgage.

Boot - An asset or liability transferred as part of an exchange of realty.

Bundle of Rights - The concept of property ownership which recognizes ownership of property as consisting of a number of rights or benefits. Included are the rights of use, exclusion, and disposition. Also, the rights can be divided among a number of different legal estates, such as reversions, life estates and leaseholds.

C

Capital Gain - The amount by which the net proceeds from resale of a capital item to exceed the adjusted cost, or "book value" of the item.

Capitalization - The process of converting into present value a series of anticipated future installment of net income.

Cash Basis Accounting - An accounting system where income is realized when collected, not when earned, and expenses are recorded when paid, not when incurred.

Cash Break-even Ratio - Operating expenses plus debt service minus replacement reserves, divided by effective gross income. This ratio provides an investor with a measure of all cash charges against effective gross income.

Cash Throw-off - Net operating income less annual debt service; also known as before tax cash flow and gross spendable income.

Certificate of Estoppel - A statement of material facts or conditions upon which another person can rely.

Closing - The time or situation when title or real estate is conveyed from seller to the buyer; full payment is made by the buyer to the seller; appropriate documents are transferred, and prorationing of expenses occurs.

Cognovit Clause - Words in a mortgage note which authorize the lender's attorney to obtain judgment lien against the debtor's real property.

Commercial Banks - Lending institutions that primarily make short-term loans to businesses and individuals. Banks "create money" through their affiliation with the Federal Reserve System. In addition to short-term commercial loans, they make many other types of loans, such as mortgage loans, and provide many financial services.

Comparable Sales Approach - Method of appraising real estate by comparing sale prices of properties that have sold recently to account for value differences in a property.

Construction Loan - A short-term loan made to a builder to finance the construction of a building.

Contract of Deed or Land Contract - An instrument by which a prospective buyer pays for a property in installments. Legal title is conveyed in the future after payment of the full price or an otherwise specified amount.

Contract Rent - The periodic payment for the use of a property specified in the lease. It may differ from the market rent and the rate that would be charged currently if the lease were to be negotiated in the open market.

Cost - The expenditure of resources necessary to bring a good or product into existence.

Cost - Depreciation Approach - A method of appraising real estate by subtracting all elements of accrued depreciation from the cost of reproducing the improvements and adding to that result the value of the land as estimated separately.

Curable Defect - (physical or functional) - A deficiency in a building, the correction of which adds at least as much value as the cost to cure the defect.

D

Debt Service Coverage Ratio - The amount by which net operating income can decline and still be adequate to cover a mortgage payment.

Declining Balance Depreciation - A method of depreciating an asset by use of a fixed percentage applied to the successive balances remaining after previously computed amounts of depreciation have been deducted.

Deed of Trust - A sealed instrument in writing, duly executed and delivered, conveying or transferring property to a trustee.

Default - The failure to fulfill a contractual agreement.

Deficiency Judgment - Judgment granted after a suit to recover a difference between a legally imposed indebtedness and the dollars received from a foreclosure sale of the debtor's assets.

Depreciation - A loss of utility and, hence, value from any cause.

Direct Capitalization - The conversion of anticipated net income into present value by dividing the income by an appropriate rate that reflects the prevailing relationship of net income to selling price for comparable properties being sold in the open market.

Discounting (Charging Points) - Withholding a portion of a loan in order to adjust a contract interest rate, nominal rate, to competitive market interest rates.

Disintermediation - Withdrawal of funds from savings accounts in thrift institutions for the purpose of investing them in higher yielding, short-term

securities - U.S. Treasury certificates and notes. The process occurs during periods of high interest rates.

E

Economic Base - The economic activity of a community which results in the exporting of goods and services to other areas and thus attracts income into the community from outside its borders.

Economic Life - The total period over which improvements to real estate contribute to the value of the property.

Effective Age - The years of age indicated by the condition and utility of a structure.

Effective Gross Income - The estimated potential gross income less allowance for vacancy and collection loss plus other income.

Escalator Clause - A phrase in an agreement providing for an adjustment of a price, rent or interest rate.

Externalities - Influences emanating from outside a property which affect it and other properties, whether vacant land or improved property.

Equity Dividend Rate - The ratio of annual cash throw-off to the original equity investment.

F

Federal Deposit Insurance Corporation (FDIC) - Governmental agency whose primary functions are supervision and insurance of accounts.

Federal Home Loan Mortgage Corporation (FHLMC) - A government related agency that provides a market for those wishing to sell previously originated mortgage loans. It primarily buys conventional loans from savings and loan associations.

Federal Housing Administration (FHA) - An agency of the U.S. Department of Housing and Urban Development (HUD) which insures private lending institutions against loss on loans under various housing programs established by programs.

Federal National Mortgage Association (FNMA) - A government-related agency that provides a market for those wishing to sell previously originated mortgage loans. It deals primarily in government-underwritten loans.

Fiscal Policy - The taxation and spending plans and patterns of the U.S. Government.

Form Report - A special type of appraisal report that can be completed relatively quickly and easily.

Federal Reserve System (FRS) - An independent government agency consisting of a Board of Governors and 12 regional banks that serve as a reservoir of funds for most of the nation's commercial banks. The system allows for the "creation" of money through the system of reserves according to policy established by the Board of Governors. Through various tools. The Fed can speed up or slow down increases in the supply of money. These changes, in turn, are usually felt in increasing or decreasing interest rates.

G

Gap Financing - A loan obtained by a builder to cover the potential difference between a permanent loan commitment and a construction loan, the amount of which is based upon a specified occupancy rate.

Generative Function - A product or service line of establishments that a customer intends to patronize when a shopping journey begins.

Going Concern Value - The value of a business considered as operating enterprise as opposed to a collection of individual groups of assets and liabilities.

Government National Mortgage Association (GNMA) - A governmental agency under HUD that provides a secondary market for mortgages granted under special purpose government programs.

Graduated Payment Mortgage (GPM) - A type of mortgage loan that allows lower payments during the loan's early years than would be the case with a standard fixed payment mortgage. The payments rise by a specified percentage usually during the loan's first five to ten years.

Gross Income (Rent) Multiplier (GIM) - The relationship between sale price (value) and either Potential Gross Income or Effective Gross Income.

H

Highest and Best Use, Vacant Site - That use of a site which results in maximum productivity and return on investment.

Highest and Best Use, Improved Property - Existing improvements which remain the highest and best use until a new use of the site generates sufficient value to justify demolition of the existing improvements and construction of new improvements.

Home Bank Loan Act (1932) - Created the Federal Home Loan Bank System.

Home Owners Loan Act (1933) - Gave all savings and loan associations the opportunity to apply for a federal charter.

I

Income Capitalization Approach - A method of appraising real estate by which a property's annual net operating income is divided by a rate reflecting a return on and of the investment. The rate is obtained from market transactions of similar properties, and the resulting number is an estimate of market value.

Incurable Defect, Physical Deterioration - An item which is worn out and costs more to replace than the value added by the cure.

Incurable Functional Obsolescence - Defects in a building's basic design or layout; an insufficient number of bathrooms and an inefficient traffic pattern are good examples. The cost to cure such defects is greater than the value added by the cure.

Installment Sale - A transaction in which a portion of the selling price for property is received in future periods.

Insurable Value - The portion of the total value of an asset(s) that is acknowledged under the provisions of an insurance policy.

Interim Financing - A subordinated loan from a land seller to a developer during the period the developer has a first-lien construction or development loan from an institution lender.

Intermediation - The process of depositing funds in financial institutions, which serve as "intermediaries" in the flow of funds for investment.

Internal Rate of Return - The interest rate that discounts future cash flows and cash reversion from a project equal to the initial investment.

Investment Entry Point (Urban Real Estate) - Refers to the relative age of a property at the time of purchase by an investor with respect to the property's time line.

J

Junior Mortgage - Any mortgage that provides a lien that is subsequent in priority to another mortgage.

L

Leasehold Financing - A loan for which a long-term leasehold serves as security. Typically, there is a loan on the underlying fee simple interest, which must be subordinated to the leasehold lender.

Lessee - One who possesses the right to use or occupy a property under lease agreement; the renter.

Lessor - One who holds title to and conveys the right to use and occupy a property under lease agreement; the landlord.

Letter Report - An appraisal form used only for simple, straightforward appraisals.

Leverage - The use of borrowed funds to finance the purchase of an asset, especially real estate. The effect of leverage can be positive or negative depending upon whether the interest rate on the debt is lower or higher than the rate of return remaining to the equity. Positive leverage enhances the equity return, while negative leverage decreases.

Lien Theory - A modern approach to creating loan security in which the lender is considered to hold an interest in, rather than a title to, the property for security of the debt.

Liquidation Value - The estimated proceeds, net of liabilities, which would result from either a normal or forced sale of an asset(s) if sold without being part of the business of which it was originally a part.

Liquidity - Relationship between a speedy sale price and the total number of dollars invested in the property.

Loan Fee - A separate charge added to the closing costs of the buyer.

Loan-to-Value Ratio - The relationship of the loan amount to the price or value of a property.

Locational (Economic) Obsolescence - Decline in the value of a building caused by the deterioration in the quality of its neighborhood.

Long-Lived Incurable Defect - A defect that will last as long as the building.

M

MAI (Member Appraisal Institute) - Designation awarded by the American Institute of Real Estate Appraisers (AIREA) which signifies that an appraiser is qualified to appraise all types of real property and meets high knowledge and ethical standards.

Marketability - Relationship between a speedy sale price and the current market value of the property.

Market Rent - Rental level ascertained by seeking out the rental rates for similar properties in the relevant market area.

Market Risk - The uncertainty associated with the decrease in the market price of an investment in response to a rise in market rates of interest.

Market Segmentation - The dividing of a large, more general market into smaller, more specific submarkets.

Monthly Loan Constant - The total monthly payments of principal and interest on a mortgage having a level payment schedule, expressed as a percentage of the initial principal amount of the loan.

Mortgage - A document providing written evidence of the right of a creditor to have property of a debtor sold upon default and foreclosure.

Mortgage Assignment - Occurs when a mortgagee sells a mortgage; the assignment is a brief form stating that the mortgagee, the assignor, transfers and assigns the mortgage and mortgage note to the purchaser, the assignee.

Mortgage Banker - Any person, firm or corporation engaged in the business of lending money on the security of improved real estate and who publicly offers such security for sale as a dealer. Usually takes title to loans.

Mortgage Broker - An agent whose chief function is to originate real estate loans for insurance companies, commercial banks and other investors. Usually does not take title to loans.

Mortgagee - The lender; the one to whom the property is pledged.

Mortgage Equity Analysis - A procedure for deriving overall capitalization rates and or valuing the debt and equity components.

Mortgagor - The borrower; the one pledging the property as security for a debt.

Mutual Savings Banks - Mutually owned thrift institutions operated for the benefit of their depositors. They are located primarily in the Northeast and have wider investment powers than the savings and loan associations.

N

Narrative Report - An appraisal form that is a complete written explanation of the entire valuation process for a specific property.

National Housing Act (1934) - Established the Federal Savings and Loan Insurance Corporation.

Net Operating Income (NOI) - Effective gross income less all relevant expenses; NOI includes only the income to the real estate.

O

Open Market Operations - One of the “economic tools” used by the Board of Governors of the Federal Reserve System whereby the Fed purchases or sells government securities.

Operating Business Risk - The type of uncertainty primarily concerned with the variance between budgeted and actual operating income and expenses.

Operating Expense Ratio - Relationship between operating expenses and project gross income.

Operating Financial Risk - The type of uncertainty primarily concerned with the ability to pay operating expenses from funds provided from operations, borrowings, and equity sources.

Overall Capitalization Rate - The direct ratio between annual net operating income (NOI) and value or sale price of a property.

Over-improvement - An improvement that is not the most profitable use for the site on which it is placed because of its excessive size or cost. It does not produce the maximum possible land value.

P

Package Mortgage - A debt secured by pledge of both real property and personal property such as range, refrigerator and furniture.

Participation Clause - The clause in a lease that requires tenants to pay additional rent on sales in excess of a certain amount.

Participation Mortgage - (a) A mortgage held by more than one lender; (b) a mortgage that calls for the lender to share in the operating income produced by the property.

Partnership - An association of two or more persons for the conduct of an enterprise other than in corporate form.

Payback Period - The time required for the complete recovery from cash throw-off equity funds invested in a project.

Pension Funds - The accumulated savings of individuals set aside during their working lives for later use when retired.

Personal Property - A chattel; an item of property that is neither the land nor is permanently attached to the land.

POC- Refers to the three most basic functions of management - planning, organizing, controlling.

Potential Gross Income - The income that a property will produce with one hundred percent occupancy.

Preoperational - Those steps taken to insure the ability to control.

Prepayment Clause (Privilege) - Mortgage contract clause permitting borrower to pay loan amounts in advance of their due dates.

Price - The quantity of one thing that is exchanged for another; the amount of money paid; asked; or offered where sale is contemplated.

Principal of Substitution - A valuation principal that states that a prudent purchaser would pay no more for real property than the cost of acquiring an equally desirable substitute on the open market.

Promissory Note - A signed document acknowledging the existence of a debt and promising repayment.

Proprietorship - Single ownership. The business and the owner are considered the same.

Pro-rating - Allocation of costs or revenues between buyer and seller according to the relative time each occupies the property.

Purchase Money Mortgage - A mortgage given by a purchaser of real property to the seller in part payment of the purchase price.

Q

Quantity Survey - A method of estimating building cost in which all elements of labor, materials, and overhead are priced and totaled to obtain building costs.

R

Real Estate - Land, including its natural components such as minerals, water, and buildings or improvements.

Real Estate Investment Trust (REIT) - A passive investment vehicle whose distributed earnings are taxed only to investors who receive them.

Realized Gain - The difference between the net sale price and the adjusted basis of the property.

Real Property - The legal rights to possession, use and disposition of real estate.

Recapture Rate (capital recovery rate) - Represents the percentage annual return of the capital invested in a depreciating asset.

Reconciliation - The process by which an appraiser evaluates, chooses, and selects from among two or more alternative conclusions or indications to reach a single answer (final value estimate).

Reconstructed Operating Statement - A statement of income and expenses prepared by an appraiser to indicate the probable future net operating income of a

property. The forecast reflects the quantity and quality of services anticipated in the stabilized income, based upon the historic experience of the property and the experience of other competitive properties.

Renegotiable Rate Mortgage (RRM) - A series of automatically renewable short-term loans secured by a long-term mortgage. The renewable rate may be adjusted at intervals of three to five years.

Replacement Cost - The cost of construction, at current prices, of a building having a utility equivalent to the building being appraised, but built with modern materials and according to current standards, design and layout.

Reproduction Cost - The cost of construction, at current prices, of an exact duplicate or replica using the same materials, construction or standards, design, layout, and quality of workmanship, embodying all the deficiencies and obsolescence of the subject building.

Residual Techniques - Assignment of a portion of income to part of an asset, with the remainder (or residual) flowing automatically to the rest of the asset.

Reverse Annuity Mortgage (RAM) - A loan arrangement in which a lender makes periodic payments to the borrower, with the borrower's equity interest in real estate serving as equity for the loan. The borrower may occupy the property until a specified loan-to-value ratio is reached.

Risk - The chance of loss on an investment or from a particular hazard, such as fire, earthquake or wind.

Risk of Default - The risk that promised payments of interest and repayment of principal will not be met fully and on schedule.

Residential Member (RM) - Designation awarded by the American Institute of Real Estate Appraisers (AIREA) that certifies that the individual is qualified to perform appraisals on one-to-four family residences.

S

Sale and Contract-Back - A financial arrangement in which an investor purchases real estate owned and used by a business firm and agrees to buy back the property in a land contract.

Sale and LeaseBack - A financial arrangement in which an investor purchases real estate owned and used by a business firm and the property is leased back to the firm by the purchaser-investor.

Scarcity - Limitations on the available supply of an economic good relative to the desire for it.

Secondary Market - A market composed of purchasers of mortgages from institutions that originate mortgage loans to the individual users.

Senior Residential Appraiser (SRA) - A designation given by the Society of Real Estate Appraisers (SREA) to individuals having extensive technical training combined with long and varied experience. The designation certifies that they are capable of appraising complex properties and providing analytical services regarding real estate purchase and ownership.

Senior Real Estate Analyst (SREA) - A designation awarded by the Society of Real Estate Appraisers (SREA) to general practice, professional appraisers who have completed a program of professional training and experience in the appraisal of both income and residential properties.

Senior Real Property Appraiser (SRPA)- A designation awarded by the Society of Real Estate Appraisers (SREA) to general practice, professional appraisers who have completed a program of professional training and experience in the appraisal of both income and residential properties.

Sensitivity Analysis - The process of measuring the effects of different loan provisions on mortgage payments and cash throw-offs.

Service Corporations - Subsidiary companies to savings and loan associations that have much wider lending and investment powers than the parent association.

Servicing - Taking all steps necessary to make certain that loan provisions are carried out.

Shared Appreciation Mortgage (SAM) - A type of mortgage loan in which the lender shares with the borrower-owner in the differential between sale price and purchase price (appreciation) at the time the property is sold. In return the lender charges a lower interest rate.

Short-Lived Incurable Defects - Those defects that do not last as long as the major portion of the building.

Sinking Fund Factor - A multiplier used to compute periodic contributions to a sinking fund that will grow with compound interest at a selected rate for a specified period of time.

Special Assistance Function - One of the functions of the Government National Mortgage Association that involves a number of programs. These programs involve making purchase commitments on certain types and categories of home mortgages which otherwise would not be readily salable.

Static Risk - Risk associated with unusual occurrences such as storms, fire or theft that affect one property, but not all properties of the same class.

Straight-Line Depreciation - The process of calculating a theoretical, uniform annual loss of value of a wasting asset based upon the estimated useful life of the property when acquired.

Strict Foreclosure - In some states (e.g. Florida), the courts give the mortgagor a period of time to cure the default and during this grace period, the mortgagor has the right to remain in possession of the property, unless otherwise agreed to in the mortgage agreement.

Sum-of-the-Year's Digits - A process by which a theoretical loss of value is calculated for a wasting asset as a deduction for computation of federal income tax. The rate of depreciation is very rapid in early years and more gradual in later years.

Suscipient Function - A product or service line of establishments which attract passersby who are attracted to the vicinity primarily by other establishments that merchandise more basic goods or services.

T

Title Theory - A concept of mortgages in which a mortgage is assumed to represent an actual conveyance of title to mortgage.

Tandem Plan - A two-part process in which the Government National Mortgage Association (GNMA) makes a commitment to purchase a package of mortgages, usually to the Federal National Mortgage Association (FNMA), at the current discount rate. GNMA then resells the package to FNMA at current discount rates for less than the original purchase price.

Tax Deferred Exchange - When income producing real estate is exchanged for other income producing real estate, termed "like property," the realized gain on the exchange need not be recognized.

U

Under Improvement - An improvement which is not adequate to develop the highest and best use of a site; usually a structure which is of lesser cost, quality, and size than typical neighborhood properties.

Unit Comparison Method - The reduction of properties to appropriate units in terms of which comparisons of otherwise not directly comparable properties, can be made.

Unit in Place Method - A method of estimating construction costs which involve estimating the unit cost of component sections of the structure installed "in place." The unit includes both materials and labor.

Utility - The capacity of an economic good to satisfy human desires or needs.

V

Value - The quantity of one economic good which can be obtained in exchange for another; value in a general sense is conceptual and means different things to different people.

Variable Rate Clause (mortgage) - A mortgage instrument carrying an interest rate that varies with changes in market rates in general, such as the prime rate or the bond market rate.

Veterans Administration (VA) - Created as part of the Servicemen's Readjustment Act of 1944 and authorized to guarantee a stated percentage of loans made to qualified veterans by qualified lenders.

W

Warehousing - An arrangement whereby an originator-mortgagee obtains short-term interim credit secured by mortgages for the purpose of bridging the gap between the completion of construction and eventual sale of the mortgage on the property to an investor-mortgagee.

Wraparound Mortgage - In general, a third party lender refinances the property by assuming the existing mortgage, and its debt service, and "wraps around" a new, junior mortgage.