

## *Definitions to Commonly Used Escrow-Related Terms:*

### **A**

**Abstract:** A set of documents which record the ownership through time for a property. A brief history of the transfers of a piece of land, including all claims that could be made against it.

**Ad Valorem:** Literally, “according to value.” this term is usually used in reference to real property taxes which are assessed according to value.

**Adverse Possession:** A process of acquiring title to real property by possession for a certain statutory period of time, it may require the fulfillment of other conditions.

**Agreement of Sale:** A written contract entered into between a seller and a buyer for sale of a property.

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### **B**

**Binder:** A temporary insurance commitment covering a piece of real estate pending closing and the issuance of a permanent title policy.

**Bona Fide Purchaser:** One who buys a property in good faith, for fair value, and without notice of any adverse claim or third parties rights.

**Breach of Contract:** Failure to perform a contract, in part or whole, without legal excuse.

**Broker Compensation or Fee:** The amount of money the broker will receive for finding a loan for a borrower. This may be an amount paid by the borrower, an amount paid by the lender or a combination of the two.

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### **C**

**Chain of Title:** A history of the ownership of a particular property.

**Certificate of Title:** In areas where attorneys examine abstracts or chains of title, a written opinion, executed by the examining attorney, stating that title is vested as stated in the abstract.

**Close of Escrow:** The date the documents are recorded and title passes from Seller to Buyer. On this date, the Buyer becomes the legal owner, and title insurance becomes effective.

**Closing:** The final step in the sale, purchase or refinance of property where ownership of the property is transferred.

**Closing Costs:** A general term to describe the fees that a borrower will pay at closing. These costs are sometimes called “settlement fees.”

**Commissions:** A fee or allowance given to a sales person or agent or realtors which usually receive about 3% of the sales price (i.e. 3% to selling realtor and 3% to listing realtor) of the property at the close of escrow.

**Commitment to Insure:** Document stating conditions of the title insurance, also referred to as binder.

**Constructive Notice:** Notice imparted by the public records of the county when documents entitled to recording are recorded.

**Contingent:** Dependent upon conditions or events specified but not yet accomplished. Property may be sold contingent upon the seller or buyer meeting a predetermined condition.

**Conveyance:** An instrument in writing, such as a deed or trust deed, used to transfer (convey) title to property from one person to another.

#### **Covenant:**

(1) A formal agreement or contract between two parties in which one party gives the other certain promises and assurances, such as the covenant of warranty in a warranty deed.

(2) Agreements or promises contained in deeds and other instruments for performance or nonperformance of certain acts, or use or nonuse of property in a certain manner.

**Covenants, Conditions and Restrictions:** Commonly called “CC&Rs” (which are sometimes referred to as private zoning) and usually refers to a written recorded declaration which sets forth certain conditions, rules, covenants, restrictions or regulations established by a landowner to create uniformity of buildings and use within tracts of land or groups of lots. These restrictions can also be established via deed.

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### **D**

**Deed:** A legal document conveying title to a property. An instrument whereby a seller transfers ownership rights of a property.

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### **E**

**Escrow Cancellation/s:** A Purchase Agreement is a legal and binding contract. One may request to cancel the escrow. For

example, if the buyer/s show that they cannot qualify for their loan, the Buyer can have their money (deposits) returned. This may also happen if the appraisal is lower than the asking price or that some problems are found during the inspections. A seller may put a “Kick-out Clause” such a clause allows the Seller to accept one buyer’s contingent offer over another and as a result back out without penalty if a second buyer makes a better offer.

**Escrow Instructions:** Are instructions that are signed by both the buyer and the seller, and that enable an escrow agent to carry out the necessary procedures required for the transaction.

**Escrow Officer:** An escrow officer is an escrow agent that acquired through experience and education a degree of expertise in escrow issues.

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## F

**Flood Insurance:** If flood determination obtained by your lender indicates that any portion of the property is located within a flood zone, a policy of flood insurance may be required by your lender.

**Full Disclosure:** The act of revealing all known facts that may affect a buyer’s decision. It is also the broker’s commitment to disclose known defects in the property for sale or lease.

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## G

**Good Faith or Mortgage Savings Clause:** A clause in CC&Rs which provides that “a violation thereof shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value.”

**Good Faith Purchaser or Mortgagee:** A person who buys or lends in good faith, that is, without notice of any existing problem, where value is paid or lent.

**Grant:** A transfer of real estate, between individuals, by deed. A transfer of real estate from a sovereign is accomplished by patent or royal decree.

**Grant Deed:** One of the many types of deeds used to transfer real property. Contains warranties against prior conveyances or encumbrances. When title insurance is purchased, warranties in a deed are of little practical significance.

**Guardian:** A person appointed by a court to manage the person and/or property of one who is legally incompetent to handle his/her own affairs.

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## H

**Hazard Insurance (Homeowner’s Insurance):** Policy that insures property against fire and other casualties.

**Holding Escrow:** The deposit of consideration with a third party by interested party or parties, for the purpose of effecting terms of a contract of agreement between the parties. These escrows involve extensive escrow instructions, scheduled communications and monitoring of monies at specified levels. Our service allows the interested parties to focus on the transaction itself, with the security of Escrow of the West as an experienced third party providing management.

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## I

**Impounds:** Type of a trust account established by lenders for the accumulation of borrower’s funds to meet periodic payments of taxes, mortgage insurance premiums, and/or future insurance policy premiums, required to protect their security. A portion of the monthly mortgage payment that is placed in an account and used to pay for hazard insurance, property taxes and private mortgage insurance.

**Indemnity:** Insurance against possible loss or damage.

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## J

**Judgment and Name Search:** Part of the title search. Determines if there are any unsatisfied judgments against the seller or previous owners which were in existence while they owned the title.

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## K

**Key Lot:** An income approach method that would not be the only method of estimating value used for commercial property in which the appraiser uses several years of income and the reversion from the sale that is discounted to present value.

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## L

**Lender’s Policy:** Protection for the mortgage holder, so that if there is a fault in title that results in a loss, the mortgage company will be paid back.

**Lis Pendens:** A notice recorded in the official records of a county to indicate that a lawsuit is pending affecting the lands described in the notice.

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## M

**Metes and Bounds:** A term used in describing the boundary lines, terminal points and angles of a specific piece of land.

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## N

**Needs-Based Pricing:** An asking price based on factors such as the funds required to pay off the seller's mortgage, the cost of remodeling, or the purchase of another house.

**Neutral Third Party:** Escrow Officer or Holder of Escrow and the Title Company are considered a "neutral third party". These third parties will not provide any advice about the fair or un-fair value of the transaction, they would encourage you to consult legal or other professional counsel if you have any such questions.

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## O

**Offset Statement:** A statement furnished to an escrow from an owner of land subject to an encumbrance (note) as to the balance due.

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## P

**Purchase Agreement:** A written contract between the buyer and the seller of an asset stating the terms and conditions under which the asset will be sold.

**Prelim or Preliminary Report:** A written report commonly issued by a title company, issued prior to issuing title insurance, which shows the recorded condition of property title.

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## Q

**Quiet Title:** To free the title to a piece of land from the claims of other persons by means of a court action called a "quiet title" action. The court decree obtained is a "quiet title" decree.

**Quitclaim Deed:** A deed operating as a release; intended to pass any title, interest, or claim which the grantor may have in the property, but not containing any warranty of a valid interest or title in the grantor.

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## R

**Reconveyance:** An instrument used to transfer title from a trustee to the equitable owner of real estate, when title is held as collateral security for a debt. Most commonly used upon payment in full of a trust deed.

**Recording:** Filing documents affecting real property as a matter of public record, giving notice to future purchasers, creditors, or other interested parties. Recording is controlled by statute and often requires the witnessing and notarizing of an instrument to be recorded.

**Report on Possession:** Supplement information learned from the title search. Inspectors verify lot size, location of improvements, evidence verifying recorded easements.

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## S

**Septic Tank:** When public sewers are not available, a property is required to utilize a septic tank system. The system includes hooking up the property's sewage system to a tank that is buried deep in the ground away from the house. The solid organic sewage is collected in the tank where it is decomposed and purified by anaerobic bacteria.

**Subdivision:** An area of land laid out and divided into lots, blocks, and building sites, and in which public facilities are laid out, such as streets, alleys, parks, and easements for public utilities.

**Subordination Agreement:** An agreement by which one encumbrance ( a mortgage) is made subject to another encumbrance (a mortgage) is made subject to another encumbrance (possibly a lease).

**Survey:** Graphical drawing that locates improvements on the land in relation to the property lines, easements, etc.

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## T

**Tax Search:** Search to determine the present status of real estate taxes against the property.

**Tenants in Common:** Property owned by two or more persons at the same time. The proportionate interests and right to possess and enjoy the property between the tenants in common do not have to be equal.

**Termite Letter:** Letter from licensed pest exterminating company stating that there is no active infestation of termites and that there is no damage from prior infestation.

**Title Insurance:** Protects a lender or owner against loss in the event of a property ownership dispute.

**Title Search:** The process of examining all relevant records to confirm that the seller is the legal owner of a property and that there are no liens or other claims outstanding.

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## U

**Underwritten Company:** A title firm which conducts title searches but is not qualified to insure, and therefore issues

policies of a qualified title insurer (underwriter) in return for a portion of the premium.

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#### **V**

**Vesting:** The names, status and manner in which title of ownership is held with a fixed or determinable interest in a particular parcel of real property.

**Voidable Contract:** A contract that may seem to be valid, but can be rejected by either one of the parties.

**Voluntary Lien:** A lien that a homeowner willingly gives to a lender.

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#### **W**

**Waive:** To voluntarily and intentionally relinquish a known right, claim or privilege.

**Warranty Deed:** A deed used in many states to convey fee title to real property.

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#### **X**

An individual who cannot write may execute a legal document by affixing an X.

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#### **Y**

**Yield Capitalization:** An income approach method that would not be the only method of estimating value used for commercial property in which the appraiser uses several years of income and the reversion from the sale that is discounted to present value.

**Yield Rate:** An income approach method that would not be the only method of estimating value used for commercial property in which the appraiser uses several years of income and the reversion from the sale that is discounted to present value.

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#### **Z**

**Zoning:** Local government regulations relating to the use of property.