

LP7 Glossary of Agricultural Real Estate Terms

Abstract of title: An abstract of title is a written history of all the recorded documents and proceedings related to a specific property. It should show everything that has been legally recorded relevant to the property and a certification by the abstractor that the history is complete and accurate. In the United States, the abstract of title furnishes the raw data for the preparation of a policy of title insurance for the parcel of land in question.

Affidavit: A sworn statement.

Appurtenance: An appurtenance is real property that is immovable or fixed to the land, such as a shed or swimming pool, and passed along with the sale of a property.

Assessed value: The value upon which property taxes are calculated. Tax-assessed values are updated every few years, but they may not reflect actual market values, especially in times of market flux.

Certificate of title: An opinion, usually by the buyer's attorney, about the title's condition (whether it is free and clear or if it has encumbrances) as of the date the certificate is issued.

Comparative market analysis: A comparative market analysis is conducted by a realtor to estimate the probable sales price of a property. It reviews various factors including recent sales of comparable properties, pending sales and listings that have similar features to the subject property.

Conservation easement: A deed restriction a landowner voluntarily places on a property to limit development and to conserve natural resources such as productive farmland, habitat, historic sites or scenic views. An agricultural conservation easement is specifically designed to protect agricultural land for agriculture.

Conservation Reserve Program (CRP): A USDA land conservation program administered by the Farm Service Agency (FSA). In exchange for an annual rental payment, farmers enrolled in CRP agree to remove environmentally sensitive land from production and plant species that will improve environmental health and quality. Contracts are 10-15 years in length. The program's long-term goal is to re-establish land cover to improve water quality, prevent soil erosion and reduce loss of wildlife habitat.

Contingency: Contingencies are specific criteria that are included in a purchase and sale agreement. They protect the buyer in the event the criteria are not met. The criteria are usually related to major categories such as: appraisal, home inspection and mortgage approval.

Covenant: Used in legal documents to signify an agreement or promise to carry out the terms in the contract, deed or other document.

Covenant against encumbrance: A seller's promise that his deed at the time he/she gives title to the buyer is free of all liens and encumbrances, except those set forth in the deed.

Covenant of further assurance: A seller's promise that he/she will get whatever legal instrument—deed, release, waiver, etc.—that is needed to make the title good.

Covenant of quiet enjoyment: A seller's promise that the title he/she gives to the buyer is superior to any claim of ownership by a third party.

Covenant of Seisin: A seller's promise to the buyer that he/she owns the property.

Covenant of the right to convey: A seller's promise that he/she has the legal right to convey the property that he/she owns.

Covenant of warranty forever (general warranty): A seller's promise to defend the title he/she gives to the buyer against "lawful claims" and compensate the buyer for any loss arising from the title's failure.

Deed: A legal document that conveys title (ownership) to real property.

Easement: An easement is usually described as a right to use and/or enter onto the property of another without possessing it. A conservation easement is a voluntary legal agreement between a landowner and a conservation organization (like a land trust) or government agency that permanently limits uses of the land in to protect its conservation values. An agricultural conservation easement specifically protects the land for agricultural purposes.

Encumbrance: An encumbrance is a claim or liability against real estate that is held by someone other than the fee owner of the property. It affects the title to the property and therefore its value. An encumbrance may transfer with the property. Encumbrances include property liens, deed restrictions, easements and encroachments.

Escrow: Escrow usually refers to money held by an impartial third-party on behalf of the people involved in a real estate transaction. Lenders may also hold certain funds in escrow to make payments for insurance and property taxes.

Fair market value (FMV): A fair market value is often an estimate of what a willing buyer would pay to a willing seller, both in a free market, for an asset or any piece of property. If such a transaction actually occurs, then the actual transaction price is usually the fair market value.

Fee simple absolute title: The most complete form of ownership, which includes the land and any improvements to the land in perpetuity.

General warranty deed: The most common deed is called a "General Warranty" deed. Such a deed contains "warranties" or guarantees from the grantor (commonly the "seller") to the grantee (commonly the "buyer") that the seller is the owner of the property and that no one else has any interest in the property, other than those exceptions stated in the deed.

Grantee: Someone to whom the title of property is transferred (buyer).

Grantor: A person who makes a grant in legal form; "conveyed from grantor to grantee" (seller).

Indemnify and hold harmless: A phrase relating to an agreement between parties in which one assumes the potential liability for injury or loss that may arise from a situation and thus relieves the other of liability. A purchase agreement generally provides that a party will indemnify the other party against losses resulting from breaches of representations and warranties. In a financing context, a bank

commitment letter and loan agreement often provide that the borrower will indemnify the agent banks and lenders for losses, liabilities and related expenses they incur from litigation or other claims related to the loan or the borrower.

Land locked: Referring to a parcel of real property that has no access or egress (entry or exit) to a public street and cannot be reached except by crossing another's property.

Land trust: A land trust is a nonprofit organization that protects land for various public purposes.

- A conservation land trust protects natural resources like open space or wildlife habitat by purchasing or accepting donations of conservation easements.
- An agricultural land trust specifically protects land for farming and ranching.
- A community land trust uses a different model. Originally used as an affordable housing tool, community land trusts own the land and lease it, usually using a 99-year renewable lease.

Legal description: A legal description is used to describe the location of your land in legal documents (for example, the deed to your land). The Public Land Survey System (PLSS) is used in legal descriptions. It employs a grid system based on township, range and section numbers.

Lien: A lien is a form of security interest—basically a hold on your property—granted to secure the payment of a debt, or performance of some other kind of obligation.

Life estate: An interest held only for the duration of a specified person's life, usually the possessor's. This may also be referred to as an estate for life or a life tenancy.

Limited warranty deed: A less common form of deed that warrants the state of title while the seller owned the property. A "Limited Warranty" deed's warranty is limited to the time the grantor owned the property, while a "General Warranty" deed's warranties also cover all the time the property was owned by prior owners.

Marketable title: Interpreted a bit differently from state to state, but, in general, it means that the evidence shows that the title is "good" or "clean," and reasonably free of defects that would give rise to litigation.

Perk test: A test to determine the absorption rate of soil for a septic drain field or "leach field." The results of a percolation test are required to properly design a septic system. In general, sandy soil will absorb more water than soil with a high concentration of clay or where the water table is close to the surface.

Prime rate: The prime rate is the interest rate charged by banks to their most creditworthy customers (usually the most prominent and stable business customers). The rate is almost always the same among major banks. Adjustments to the prime lending rate are made by banks at the same time; although, the prime rate does not adjust on any regular basis.

Quitclaim deed: Conveys to a buyer only what the seller actually owns, if anything, and provides no guarantee from the seller to the buyer that the seller has any interest in the property to convey. The rule to follow for a person accepting a quit claim deed is "buyer beware." If it later turns out that the

seller's rights to use the property are encumbered by another person's interest in the property, the buyer is out of luck, and has no recourse against the seller.

Rent roll: A list of tenants, usually with the terms of their leases.

Representations and warranties: A representation is an assertion as to a fact, true on the date the representation is made, that is given to induce another party to enter into a contract or take some other action. A warranty is a promise of indemnity if the assertion is false.

Right of way: A type of easement that allows a person to pass through another's land, usually through a path, driveway or road.

Special warranty deed: A seller's promise to the buyer limited to the seller's period of ownership.

Survey: To determine the exact form, boundaries, position, extent, etc., of (a tract of land, section of a country, etc.) by linear and angular measurements and the application of the principles of geometry and trigonometry.

Title insurance: Protects against losses that emerge during ownership from title defects.

Topography map (aka topo map): A map showing topographic features, usually by means of contour lines.

1031 Exchange: Also known as a like-kind, Starker or tax-deferred exchange, a 1031 Exchange enables commercial property owners to sell a property and defer tax payments by reinvesting the proceeds into a "like-kind" property or properties. A 1031 Exchange is enabled by Section 1031 in the Internal Revenue Code.

This *Glossary of Agricultural Real Estate Terms* has been informed in part by definitions in *Black's Law Dictionary* <https://thelawdictionary.org>, LANDTHINK's Land Lingo <https://www.landthink.com/land-lingo/> and *Merriam-Webster's Law Dictionary* <https://www.merriam-webster.com/legal>.