Glossary of Distressed Housing Terms

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A

Abandonment – The intentional relinquishment of a known right. For example, by vacating a home and turning the keys over to the lender with a written statement indicating that the owner is giving up all right, title and interest to the property.

Acceleration - The process of calling the entire unpaid principal balance of a loan due and payable, when a default has occurred and was not cured in time. Acceleration of the unpaid principal balance upon default cannot occur unless the loan documents, usually the promissory note, contain an acceleration clause.

Addendum – A document added to an agreement either at the time of execution (i.e. signing) by the parties, or thereafter. If properly prepared and signed, the addendum becomes a legal part of the original agreement. Multiple addendums to a document are sometimes collectively referred to as "addenda."

Adjustable Rate Mortgage ("ARM") - A loan in which the stated interest rate can "adjust" or change, usually based upon the rise or fall of an identified index that is widely used. ARMs are typically subject to "caps," or limits, on the amount of any single interest rate adjustment and on the total interest rate change permissible over the life of the loan. *[Typically, the borrower's interest rate includes a fixed margin or constant of X% that when added to the indexed rate equals the borrower's adjusted rate. Smart shoppers for ARMs sought adjustable rates that included lower margins, since it was this component that was fixed. A margin could never change, just the indexed rate.]*

Affidavit - A written statement of facts sworn to be true by the person making it. That person is called the "Affiant."

Agent – A designated person or entity authorized to act for and on behalf of a third party (known as the "principal"). The law generally imposes certain "fiduciary duties" such as good faith, fair dealing, honesty, full disclosure, etc. on agents when acting on behalf of their principal. Oregon real estate law, like most states, imposes these fiduciary duties on real estate agents. [See, ORS 696.800-696.995 governing the fiduciary duties of real estate agents.]

Allonge – A document attached to a promissory note in order to enable it to be endorsed *["indorsed" per the Uniform Commercial Code, or "UCC"]* when there is no space on the back of the note itself. Allonges were subject to much abuse, such as forgery, in the early years of the foreclosure crisis in judicial foreclosure states, such as Florida.

Alt-A Loan – These loans were a staple of the lending industry during the easy credit years of 2004 – 2007. The term "Alt-A" refers to a category of loans that are based upon the risk of borrower default. In terms of risk, they are somewhere between subprime [i.e. the highest potential for borrower] and prime loans [i.e. those given to the most qualified borrowers]. The interest rate, which is the primary indicator of a lender's perceived risk of borrower default, is generally higher on Alt-A loans, but lower than on sub-prime loans.

Amortization – The gradual reduction of the principal balance of a loan that results from periodic payments by the borrower. Once the last payment is made, it is said that the loan has been "fully amortized."

APR – Acronym for "annual percentage rate," meaning the yearly cost of a loan, stated as a percentage of the original amount of the principal. However, APR is more than just the simple interest charged for the loan; it includes other costs, such as points paid and other fees and charges. It can be a useful tool for comparing loans, since the APR gives the borrower the ability to compare the loan cost between different lenders.

Appraisal - The process of establishing the fair market value of a property. There are three different methods of appraisal of real property. For residential, the "market data" approach is the most common and involves an analysis of recent sales of similar *[i.e. "comparable"]* properties. Lenders require appraisals of property in order to establish how much to lend. If the bank's appraised value is less than the sale price, the bank will only loan against the appraised value. The standard statewide sale form in Oregon published by Oregon Real Estate Forms, LLC *[Hereafter, this company will be referred to as "OREF"]* contains a buyer contingency providing that if the property does not appraise for at least the sale price, the buyer may withdraw from the transaction and recover back the earnest money deposit. In Oregon, an "appraisal" may only be made by a licensed appraiser. A "Broker Price Opinion" *[defined below]* will not qualify as an appraisal for lending purposes.

Appraised Value – The opinion of value of a property issued by a state-licensed appraiser. For lending purposes, banks will loan up to a percentage of the appraised value, with the remainder coming from the borrower in the form of the down payment. When the sale price of a property exceeds the appraiser's opinion of value, it usually means one of two things: (a) The buyer and seller will have to reach agreement on how the additional amount above the appraised value will be dealt with – either the buyer pays the amount, the seller reduces the sale price, or some combination of the two; or (b) The transaction fails.

Appreciation - The increase in market value of a property. Appreciation may be the result of market forces, i.e. supply and demand, or by physical improvements making the property more desirable. It is the opposite of "depreciation," which is the loss in value.

Arms-Length Transaction – A transaction between two or more parties in which there are no undisclosed relationships or motivations. The sale and purchase of real estate between two strangers whose sole motivation is to sell and buy, is said to be "arms-length." One between a seller and the seller's relative or close friend, designed to relieve the seller of the financial obligation of a recorded mortgage on the property, may not be arms-length.

Assessed Value - The value placed on real property by an assessor, such as the tax assessor. The tax "assessed value" is not the same as the appraised value, which is frequently higher.

Assessment – A charge made against a property, usually by a governmental entity, for taxation purposes or to recover the cost of some expenditure, such as a public improvement. Assessments – or the right to make future assessments - usually appear on the public record, and are thus disclosed on title reports issued by title companies.

Assessor: A governmental official responsible for assessing property for tax purposes. The assessor may or may not be the same as the tax collector, depending upon the city or county.

Assignment – The act of transferring certain rights, duties and obligations to a third party. In order to be effective, the third party, known as the "assignee," usually must agree to assume these rights, duties and obligations. Most assignments do not automatically relieve the person making the assignment, known as the "assignor," from liability for the obligations assigned.

Assumable Loan – A loan made to a borrower that the lender may permit to be transferred and assumed by another party. Most conventional loans today are not assumable, and in fact, if the property upon which the loan is made is transferred, the lender will have the right to call the entire loan due and payable. This remedy is contained in a "due on sale" or similar clause, found in most loan documents today. In the 1970s many loans were assumable, but at the end of the decade, when interest rates had climbed to 18% or more, lenders discontinued the practice of permitting loan assumptions – or if they did permit assignment, the assumable rate was readjusted to reflect the current [i.e. higher] rate.

Attorney-in-Fact – One acting under a written power of attorney on behalf of another. The attorney-in-fact's authority is limited exclusively to the powers enumerated in the written document. An attorney-in-fact form may either be "general," i.e. virtually unlimited, or "special" or "limited," i.e. restricted to certain acts, such as signing certain legal documents.

Automated Underwriting – *[See also, "Underwriting," below.]* The process of evaluating and deciding upon whether to make a loan based upon a computerized evaluation of the borrower's credit credentials, thus eliminating any personal bias or subjectivity in the loan approval process.

B

Back-End Ratio – *[See, Debt-to-Income Ratio ("DTI"), below.]*

Balance Sheet – A financial statement showing assets and liabilities of a person or company. The difference between the assets and liabilities is called "net worth."

Balloon Payment - A lump sum payment of principal made to the lender. It may be scheduled in the loan documents or, if the loan permits, by full or partial balloon payments, made at any time the buyer decides to do so. A "full" balloon payment would be the sum necessary to pay off the entire principal balance of the loan, whereas a "partial" balloon payment would be something less than that. Most loan documents provide that making a partial balloon payment will not excuse the borrower from continuing to make the remaining regularly scheduled payments of principal and interest. Frequent partial principal payments, such as every two weeks *[rather than monthly]* will have the effect of dramatically (a) reducing the total interest paid over the life of the loan, and; (b) accelerating the date the principal loan balance will be completely paid off.

Bankruptcy – A process under federal law whereby a debtor asks the court to take control of their non-exempt assets, if any, liquidate them, and distribute any proceeds to the unsecured creditors in full satisfaction of all of the bankrupt's liabilities. This is known as a "Chapter 7 Bankruptcy." Secured creditors *[i.e., those that have "secured" the bankrupt's repayment obligation by a mortgage or other security document]* typically have more protection in bankruptcy because they have the first right to attach and liquidate their security interest in the bankrupt's assets. At the moment of filing for bankruptcy, all creditors are strictly forbidden from attempting to secure payment from the debtor without permission of the court. A Chapter 13 Bankruptcy sets up a payment plan between the borrower and the major creditors to be monitored by the court. Under a Chapter 13, the homeowner is permitted to keep the property, but must make payments according to the agreed-upon terms of the plan within a 3 to 5 year period.

Beneficiary – In trust deed law, the beneficiary is the lender to whom repayment of the loan is to be made. MERS *[defined below]* purports to serve as the "nominal beneficiary" for its member banks. As of June 1, 2012, the legality of this model is still being litigated in Oregon. In general law, a "beneficiary" is the person receiving a specified benefit under a trust, will, or some contractual provision. In a trust agreement, the beneficiary is the person or entity designated to receive some asset, money, or other consideration.

Biweekly Payments – The payment of a loan twice a month. The effect of this arrangement is to reduce principal sooner, which means that there is less interest charged to the borrower over the life of the loan. This arrangement also significantly accelerates the ultimate payoff of the entire principal loan balance.

Blanket Mortgage or Trust Deed – A mortgage or trust deed secured by more than one parcel of property. Frequently, when such an arrangement is established with a lender, the borrower insists upon a "partial release" provision, in order to allow parcels to be released from the lien of the blanket encumbrance as pre-agreed portions of the indebtedness are repaid.

Bona Fide Purchaser – The term "bona fide" is Latin for "good faith." A bona fide purchaser (or "BFP") is one who pays full and fair consideration for a property, acting in good faith, and without notice of any adverse claims against the property. The law gives certain legal preferences to BFPs when there are competing claims to purchase the same property.

Breach of Contract – The violation of, or failure to perform, the terms of any contract without legal excuse. Most written contracts provide for legal remedies upon a material breach of the contract.

Bridge Loan – A loan given by a lender for a short period of time. In the past, bridge loans were frequently given to "bridge" or cover the carrying costs *[such as mortgage payments, etc.]* for a borrower who had acquired a second residence, but had not yet been able to sell their first home. Bridge loans are less frequent today due to the tightening of credit standards and slowing of home sales.

Broker – An intermediary involved in the sale of a product or service, such as a stock broker, mortgage broker, insurance broker, business chance *[or "business opportunity"]* broker, or real estate broker.

Broker Price Opinion ("BPO") – The opinion issued by a licensed real estate broker, concerning the present value of a property for resale purposes. Banks frequently obtain BPOs from brokers prior to deciding whether to (a) modify a loan; (b) accept the property back in lieu of foreclosure; (c) consent to a short sale; or (d) list bank owned property for a certain price. BPOs are not "appraisals," although they may both reach similar conclusions regarding present value. However, in Oregon, appraisals may only be issued by state licensed appraisers. Technically, BPOs from licensed real estate brokers do not express an opinion of the "fair market value" of a property, but that distinction is generally lost on the public.

C

Cancellation of Debt ("COD") – This is the term used to refer to any event in which a debtor *[e.g. the borrower under a note and mortgage or trust deed]* is forgiven of the duty to repay the balance owed on their debt. Subject to several exceptions, the IRS treats COD as income at the debtor's ordinary income tax rate. Foreclosures, deeds-in-lieu, short sales and even loan modifications can all potentially be taxable COD events. The primary exception to the COD tax is the Mortgage Debt Relief Act of 2007, which expires at the end of 2012, unless renewed. Subject to certain exceptions, this federal legislation permits taxpayers to exclude taxable COD income arising from the discharge of debt on their principal residence. For more information, see IRS Code §108.

Cap – The maximum limit placed on an adjustable rate mortgage ("ARM"). Since adjustments to the loan's interest rate are tied to a well-recognized index, e.g. LIBOR *[see definition below]*, it is important for the borrower to know what "caps" apply. For example, the ARM may have a cap on the amount of any single interest rate increase, as well as maximum total interest rate cap over the life of the loan.

Capital Gain – The gain received by a taxpayer upon sale or other disposition of a capital asset. Gain is measured by the difference between the original purchase price *[the "original basis"]* and the total sale price received by the taxpayer. If capital improvements *[e.g. a new roof]* are made to the property, the original basis is adjusted upward by the cost of that improvement. It is this new basis, i.e. the "adjusted basis," that is deducted from the sale

proceeds, to determine the amount of the taxable capital gain, which is taxed to the taxpayer at the applicable capital gains rate.

Capital Improvement – Any material improvement *[usually structural, such as a new furnace, a new addition, new garage, etc.]* to a capital asset that generally increases value or adds to its useful life over one year. The cost of a capital improvement is added to the original basis of the property *[generally the purchase price]* when calculating any capital gains (or losses) when the asset is sold or disposed of. Not all improvements are regarded as "capital improvements" even though they may improve the appearance of the property or make it more valuable. Routine repair or maintenance is not a capital improvement.

Cash-Out Refinance – The refinancing of a property where the borrower receives cash in excess of the amount necessary to pay off the underlying loan(s) being refinanced.

Casualty Insurance - Insurance covering loss from damage to property resulting from the occurrence of certain risks such as fire, wind, earthquake, etc.

Certificate of Eligibility – The document used by the federal Department of Veterans Affairs ("VA") to certify that the veteran is eligible for a guaranteed loan. The certificate can be obtained through a VA approved lender, the VA website or by mail.

Certificate of Reasonable Value ("CRV") – The document used by the federal Department of Veterans Affairs to designate its opinion of value based upon an appraisal and the maximum allowable loan amount it will permit.

Chain of Title – The successive conveyances of title to real or personal property. The chain usually starts from the federal land patent and continues by successive *[or "mesne"]* conveyances of record to the present day. A "clean" chain of title would indicate that there were no unbroken "links" in the successive conveyances; that is, every owner appearing on the public record properly received title from his or her predecessor before they conveyed out their interest to their successor. *[See also, "Title" below.]*

Clear Title – Usually designates that the property is "marketable," that is it is clear of any objectionable liens or encumbrances, and therefor may be sold to a third party. If title is not "clear," it is not marketable.

Closing – The process - sometimes known as "settlement," especially on the East Coast – by which title is conveyed by the seller in exchange for full payment by the buyer. Closing involves the calculation and collection of all sums necessary to pay off recorded liens, including unpaid property taxes, and the recording of the deed in the public records of the county in which the real property is located. The closing date is normally set forth in the sale agreement. In Oregon, almost all closings are handled by licensed escrow companies that also act in conjunction with a title insurance company. Attorneys are exempted from the escrow licensing requirement, but rarely close real estate transactions in Oregon.

Closing Costs – The charges paid at the time of closing, including such things as the title insurance premium, prorated items such as prepaid property taxes, costs of escrow, recording fees, real estate commissions and lender charges.

Cloud On Title – An expression referring to any matter *[on or off the public record]* that negatively affects the marketability of title to real property. Objectionable matters, such as a boundary encroachment *[off record]* or a tax lien *[on record],* would be clouds on title to real property.

Collateral – The property used as security for repayment of a debt. The security is in written form, and for land, it is usually recorded on the public record where the property is located. In Oregon, a written security interest in land is known as a "trust deed" or "deed of trust" and recording of the document gives legal notice to the world *[known as "constructive notice"]* that the property is subject to the lender's secured interest. A recorded trust deed acts as a lien on the secured real property. If a borrower defaults on their loan, the lender may foreclose its trust deed, that is, the "collateral." If something is "collateralized," *[i.e. used as a verb]* it means that some or all of the property is secured, usually to a lender who loaned money against it and took back a deed of trust for security.

Collateralized Debt Obligation ("CDO") – A generic term used to describe any security that collateralizes the cash flows generated by a pool of debt obligations, such as notes and mortgages. If the securitized pool consists only of mortgages, it is called a "Collaterized Mortgage Obligation" or "CMO." A "Residential Mortgage Backed Security" is a "RMBS." A "Commercial Mortgage-Backed Security" is a "CMBS."

Collection Account – An account, usually handled by a licensed escrow, set up between seller and buyer for purposes of collecting the buyer's payments, depositing them in the bank, remitting payment to the seller, paying the property taxes and hazard insurance, and maintaining an accounting for the parties. Collection accounts are not uncommon when property is sold on a private land sale contract. Sometimes the seller places a pre-signed fulfillment deed in escrow with instructions to record it when the entire contract balance is paid in full.

Combined Loan-to-Value (CLTV) Ratio - While the loan-to-value ratio *["LTV"]* is the ratio of a single loan to the lower of a property's sale price or appraised value *[e.g. 80% LTV]*, the CLTV is the ratio of the first loan combined with all other subordinate financing *[e.g. a second position loan or home-equity line of credit]* to the lower of the property's sale price or appraised value.

Commission – In real estate brokerage law, the charge made to a seller for marketing a property and procuring a ready, willing and able buyer. Agreements to pay a commission are commonly addressed in the listing agreement between the seller and seller's agent. If the buyer has a separate real estate agent *[i.e. separate from the seller's agent]*, a portion of the gross commission is split with that agent. Commissions are normally paid at the time of closing from the seller's gross proceeds of sale.

Commitment Letter – A letter issued by a lender indicating its willingness to make a loan to a borrower based upon certain pre-set conditions and assumptions.

Comparables ("Comps") – In establishing residential real property values, real estate agents and appraisers rely most heavily on the use of comparables or "comps," which

consist of property sales data obtained by a review of the most recent arms-length transactions (that is, not between related parties, etc.) of similar properties in similar neighborhoods. The motive for selling affects the validity of a comp, since short sales and other distressed transactions reflect prices in which the seller is operating under different motivations than obtaining the highest and best price.

Comparative Market Analysis ("CMA") – An analysis performed by a licensed real estate broker by comparing and analyzing the prices of recent sales of comparable properties. The Oregon statute refers to CMAs as a "competitive market analysis" for unknown reasons, but it is the same thing. *[See, ORS 696.010(5)]* Similar to BPOs ("Broker Price Opinions"), CMAs are not "appraisals" even though the process and outcome of the analysis may be similar.

Condominium – A unique form of property ownership in which the owner *[called the "unit owner"]* acquires the interior space of a unit together with the exclusive right to use other portions of the property, such as the deck and/or parking space *[known as "limited common elements"]* and a nonexclusive right to use other portions, such as a clubhouse, hallways, etc. *[known as "general common elements"]*. Governance regarding enforcement of the recorded rules *[called the Declaration]*, and corporate regulations such as bylaws, is through a Unit Owners' Association, which has the power to assess dues to cover maintenance, repair and replacement of the limited and general common elements. *[See, ORS Chapter 100]*

Conforming Loan – A loan that complies with the underwriting guidelines established by one of the government sponsored enterprises, or "GSEs," e.g. the Federal National Mortgage Association ("FNMA" or "Fannie Mae") and the Federal Home Loan Mortgage Corporation ("FHLMC" or "Freddie Mac"). The best known guideline is the maximum amount of such a loan, which is $417,000 in most parts of the country but under the Economic Stimulus Act of 2008, was amended and raised to $729,000 in certain high cost areas.

Consideration – Anything of value that is given in exchange for something else. It can consist of something tangible, such as money; an act, such as performance; or forbearance to act, such as an agreement not to sue. Contractual agreements must be supported by some form of consideration in order to be enforceable.

Consumer Financial Protection Bureau ("CFPB") - Federal agency charged with regulating consumer protection laws relating to mortgages, credit cards, and other consumer financial products and services. It was created in 2010 by the Dodd–Frank Wall Street Reform and Consumer Protection Act.

Conventional Loan – A loan from a private bank or other institutional lender, as opposed to one guaranteed or insured by the federal or state government, such as the Oregon Department of Veterans Affairs *["Oregon DVA"]*, the Federal Housing Administration *["FHA"], or* the federal Department of Veterans Affairs *["DVA"]*.

Conversion Clause – A clause in a loan containing an adjustable interest rate that permits the borrower to "convert" it to a fixed rate loan for the balance of the term. The new fixed

term interest rate is usually tied to some well-known index. These types of loans are sometimes called "Convertible ARMs."

Convertible ARMs – See, "Adjustable Rate Mortgage" and "Conversion Clause," above.

Counter-Offer – An offer made in response to an earlier offer. Counter-offers are legally regarded as an implied rejection of the earlier offer even if they do not say so.

Credit – In lending, the extension of "credit" is the making of a loan subject to certain repayment terms.

Credit Bureaus – Companies that for a fee provide consumer information and data on the payment histories of people who have consumer loans, credit cards, or other financial obligations such as rental history.

Credit Counseling Services – Public or private agencies that help educate consumers on controlling or avoiding spending and the accumulation of debt.

Credit History – The record of one's debt history. Credit history is used to evaluate one's fitness for loan repayment as well as judging the risk of default. One's credit history determines the interest rate that will be charged for a loan, or the premium that will be charged for some other service, such as auto or life insurance. The greater the perceived credit risk, the higher the rate or premium. Credit history is reflected in a report and is often accompanied by a credit "score" such as a "FICO" score, defined below.

Credit Rating Bureaus – These are firms that rate the quality of bonds and other securities such as packaged mortgage investments. Investors rely upon the ratings in order to evaluate risk and the probability of default. The best known rating bureaus are Standard and Poor's ("S&P"), Fitch, and Moody's. The Securities and Exchange Commission regulates the ratings bureaus.

Credit Report - A written report containing detailed information about a consumer's credit history. It includes such things as identifying information and past names, open and closed credit accounts, loans, bankruptcies and late payment history. Some credit reports also disclose recent credit inquiries. Credit reports are ordered *[with the borrower's consent]* by prospective lenders to determine their creditworthiness and ultimately their ability to repay the loan, or extension of credit, applied for.

Credit Union – Member-owned non-profit lending institution that provides certain financial services including savings accounts and lending. Joining a credit union frequently requires that one belongs to a participating entity, such as a school district or other large employer.

Creditor – One to whom a debtor, such as a borrower, owes money.

D

Debtor - The person or entity owing money to a creditor such as a bank or other lender. In real estate finance, the "debtor" is the borrower.

Debt-to-Income ("DTI") Ratio – The relationship between one's monthly reoccurring debt, versus their gross monthly income *[i.e. before deduction for tax withholding, social security, etc.]* from all sources. There are two DTIs: The amount of one's total reoccurring monthly housing expense *[i.e., for principal, interest, taxes, insurance (aka "PITI") and HOA dues]* compared to their gross monthly income from all sources, will yield a ratio called "the Front-End DTI" or "Front-End Ratio." One's total reoccurring monthly expenses *[both housing and non-housing]* compared to their gross monthly income is known as the "back-end DTI." Although ratios may vary, many conventional lenders insist that borrowers' front-end DTI not exceed 28% and their back-end DTI not exceed 36%. The lower these ratios, the better one's chances are to obtain a loan.

Deed –The document used to convey title to real property. An owner who makes the conveyance by deed is the "grantor" and the person acquiring the title is the "grantee." Deeds are normally recorded upon closing of the transaction in the public records of the county where the property is located. In Oregon there are four primary types of deeds; each differs based upon the representations the grantor makes to the grantee about the quality of the title. In order of protection to the grantee, from the most to the least, they range from Warranty (or General Warranty) Deed, Special Warranty Deed, Bargain and Sale Deed, and Quitclaim Deed. *[See, generally ORS 93.850 – 93.870.]*

Deed-in-Lieu-of-Foreclosure ("DIL") – A deed given by a borrower to the lender transferring title in the secured property back to the lender. Although it avoids the unpleasantness of going through the foreclosure process, legal advice should be obtained before giving property back in this manner, as there can be unintended legal, credit, and tax consequences. See Q-Law blog post discussing DILs, here.

Default – The failure to honor the terms of a contract. Most contracts, such as a note and trust deed, require that written notice of default be given to the borrower before the lender may institute the foreclosure action.

Defendant – One against whom a lawsuit is filed in court. In arbitration the defendant is called the "respondent."

Deficiency – In its most general sense, a "deficiency" is any shortfall in the repayment of a debt or other financial obligation. For example, if a lender judicially foreclosed a property and netted $300,000 after sale, but the debt due from the borrower was $400,000, the court might issue a judgment against the borrower for the deficiency, i.e. $100,000. However, Oregon has several anti-deficiency provisions protecting certain qualifying homeowners from the risk of a deficiency. If the foreclosure is "non-judicial" the foreclosing lender can obtain no deficiency, since Oregon law provides that the promissory note (which provides the basis for the deficiency) is essentially extinguished. *[See, ORS 86.770.]*

Depreciation – In real estate terminology, "depreciation" is the loss in value due to market conditions, age, excess wear and tear, and other causes. In income tax terminology, "depreciation" of certain property is a deductible item representing the cost of replacement of the asset over its useful life.

Desktop Underwriter ("DU") – Fannie Mae's automated loan underwriting system that is used by originating lenders intending to sell their loans to it. Being automated, the system avoids the risk of human subjectivity in the lending process.

Discount Points – A "point" is normally equal to 1% of the amount of the loan. Points are paid for purposes of reducing or "buying down" the interest rate on a loan. By reducing the interest rate, the monthly payments are also reduced, meaning that the loan becomes more affordable to those whose income would not qualify them for a higher monthly installment. Points are a form of pre-paid interest and thereby increase the lender's yield on the loan.

Distressed Housing – Residential housing that has lost value when compared to its value when originally purchased or following the latest refinancing. Frequently, distressed housing is also characterized by a trust deed and/or other liens that together exceed the price the property can be sold for today.

Distressed Transaction – Any type of real estate transaction in which the seller is compelled to sell or transfer the property back to the bank or to a third party due to adverse factors or events such as the inability to refinance a burdensome loan, a falling real estate market, lack of renters or buyers (if investment, retail or commercial property) or personal circumstances, such as job loss or divorce. Examples of distressed transactions include transfers by deed-in-lieu-of-foreclosure, short sales, etc. Distressed transactions are primarily characterized by a property that has lost significant value, usually below the total indebtedness due on it and/or loan repayment terms that the borrower can no longer afford to meet. *[Note: A loan modification could be regarded as a "distressed transaction" since it fits the above criteria, although the process is designed to permit the borrower to remain in the home. – PCQ]*

Dodd-Frank – The Dodd-Frank Wall Street Reform and Consumer Protection Act. A 2010 federal law regulating the financial industry. Its purpose was to prevent a repeat of the 2008 financial crisis by establishing new rules designed to increase transparency and accountability within the lending industry. It also implemented rules for consumer protection and created the Consumer Financial Protection Bureau (CFPB).

Down Payment – The principal amount paid at the time of closing that represents *[in addition to the earnest money deposit]* the buyer's cash contribution toward the purchase price of a property. The remaining balance of the purchase price is the amount financed, either by a lender, the seller, or a combination of the two. An 80% loan would generally mean that 20% of the purchase price is represented by the buyer's down payment.

Due on Sale Clause – The clause in a loan that permits the lender to declare a default should the borrower/owner convey the property to a third party without the lender's written approval. Most due on sale clauses are very detailed and prohibit any form of transfer of the property or any interest therein, including the right of possession through rental or lease.

E

Encumbrance – A generic term referring to anything affecting title to a property. Some encumbrances are reasonable and necessary, such as easements for the installation, maintenance and repair of underground utilities. This type of encumbrance does not impair the marketability of a property. Certain recorded encumbrances, such as judgments, tax liens, mortgages and trust deeds, do affect marketability, and must be removed prior to closing in order to transfer clear title to the property. Some encumbrances, such as a building encroachment, do not normally show up on the public record, but if discovered, can also affect marketability of title.

Equator – A proprietary internet platform used by certain large banks/servicers when negotiating a pre-foreclosure distressed housing event *[e.g. short sale]* with a borrower or borrower's representative. Equator also provides default servicing solutions.

Equity – The amount by which the fair market value of a property exceeds the total balance due of all recorded financial claims owed against it (such as loans, judgments, taxes, etc.). When recorded financial claims exceed the fair market value, it is called "negative equity" *[see below]*.

Escrow – The service provided by licensed companies acting as a neutral third party between seller and buyer in a real estate transaction. Escrow only acts on written instructions from the parties, known as "escrow instructions." An escrow officer assigned to the transaction collects all sums due *[such as the buyer's down payment and the lender's loan funds]*, solicits payoff statements from all existing creditors of record, and distributes all funds to those persons or companies necessary for removal of their recorded liens and other financial claims appearing on the public record. This process is known as "closing" or "settlement." In Oregon closings are handled by licensed escrow companies, rather than attorneys.

Escrow Account – An account handled by escrow. Distribution of funds from this account cannot occur without joint written instructions from the parties. If any party objects to a disbursement, escrow will not do so until it has consent from everyone. If that cannot be obtained, escrow will tender the money into court and ask for judicial directions through a process called "interpleader."

Eviction – The process of removing a commercial or residential tenant from the property they are possessing, usually under a rental or lease agreement. The technical name for the process is a "forcible entry and detainer" or "FED," which is a "summary" or fast-track judicial proceeding, usually taking less than two weeks, unless contested. *[See, ORS 105.105 to 105.168]*

F

Fair Credit Reporting Act – The federal law enforced by the Federal Trade Commission *["FTC"]* that is designed to promote accuracy and privacy of the information used in consumer credit reports. It also places certain requirements on credit reporting agencies.

Fair Housing Act – The federal law that prohibits discrimination in the sale, rental or financing of residential property based upon race, religion, color, national origin, familial

status *[i.e. families with children]*, sex, and disability. Some Oregon cities have identified gender-related and other classes for protection.

FICO or FICO Score - Fair, Isaac & Company ("FICO") – Through a complicated, secret, and proprietary set of algorithms, this company has developed a "FICO score" which is heavily relied upon by lending institutions in evaluating a person's credit and their ability to timely repay a loan. The lower the score, the greater the perceived risk of default. The scores are based upon information from the three major credit bureaus; Experian, TransUnion and Equifax. Scores range between 300 to 850. *[See, myfico.com]*

Fair Market Value – The value of a property that would be paid by a hypothetical ready, willing, able and knowledgeable buyer in a voluntary arms-length purchase transaction. The price paid for a property in foreclosure or some other forced or distressed sale proceeding is not necessarily the fair market value; the cumulative effect of multiple short sales, foreclosures, and bank sales in a neighborhood can have a negative impact on fair market value.

Fannie Mae ("FNMA") - The government sponsored enterprise *["GSE"]* known by its full name, the Federal National Mortgage Association. It is similar to Freddie Mac *[the "Federal Home Loan Mortgage Association"]*, which, until both were taken over by the federal government in 2008, were privately held, shareholder-controlled corporations. They have the same purpose today, i.e. purchasing residential loans from banks so they can re-lend their funds to more home purchasers. This model of purchasing loans from originating lenders is known as the "secondary mortgage market." Together, Fannie and Freddie acquired over 50% of the loans sold into the secondary mortgage market. The remainder of the secondary market consisted of private investors and similar entities, sometimes known as the "private label market" defined below. Following the credit and lending crisis of 2008 and thereafter, the private label secondary mortgage market has dried up, leaving Fannie and Freddie as the two major players.

Federal Housing Administration – The federal agency generally known as "FHA" that provides mortgage insurance on loans made by its approved lenders. The FHA does not make direct loans but insures mortgages on single family and multifamily homes and manufactured homes. Its mortgage insurance provides lenders with protection against losses resulting from borrower default. FHA-insured loans permit low down payments and more lender flexibility in borrower debt-to-income ratios. The mortgage insurance premium is passed along to the homeowner and generally is included in the monthly payments.

Fee Title – This term, derived from old English Common Law, refers to the full legal "bundle of rights" that the owner has in the property. It is assumed today in most transactions that the owner has fee title and thereby the ability to convey all right, title and interest in the property. This is usually verified by the issuance of a policy of title insurance to the buyer or new owner. *[Note: Having fee title is not the same as having "marketable title" [defined below]. One can have "fee title" that is encumbered by objectionable liens, encumbrances, or other claims, such that it is not marketable, and therefore, is not saleable. – PCQ]*

First Mortgage or Trust Deed – A "first" mortgage or trust deed is one that was recorded in the public records before any others on the same property. The time of recording is determined by the time affixed to it by the recording clerk immediately upon taking it for recording. Being "first" in time of recording generally gives the holder of the mortgage or trust deed priority over junior, or "subordinate", loans *[defined below]* that were subsequently recorded. This priority means that the foreclosure sale proceeds will be applied toward reduction of its indebtedness due the first lender, before holders of the second and third mortgages. It also means that if the first mortgage holder forecloses, the holder of the second mortgage must pay off the first mortgage in order to avoid foreclosure of its own interest. *[The date of execution, i.e. signing, of the mortgage or trust deed does not determine its priority. Rather, priority is determined by the date of recording of the document in the public records where the property is located.]*

Fixed-Rate Mortgage – A mortgage with an interest rate that remains at the same level for the balance of the loan term. In other words, the interest rate does not "adjust" at given intervals, such as an adjustable rate mortgage ("ARM").

Flood Insurance - Insurance protecting homeowners from loss by flood. The Federal Emergency Management Agency ("FEMA") makes flood plain maps, which are relied upon by lenders and others in determining whether flood insurance must be purchased as a condition to making a loan.

Forbearance – The act of giving up entitlement to exercise a legal right or remedy. To forbear taking action is not necessarily the same as a complete waiver of the legal right to later do so, but merely a suspension on taking certain action. For example, a bank might grant a forbearance to the borrower from making the next three months' payments.

Force-Placed Insurance – Insurance that is placed on a property by the lender. It is usually triggered when the borrower has failed to keep the insurance current. Since lenders are named as additional insureds on their borrowers' policies of casualty insurance *[e.g. fire or other risks]*, if that borrower-placed policy expires or is not renewed, the lender will secure its own insurance. Force-placed insurance is exorbitantly expensive, due in part to the fact that the premiums include fee-sharing arrangements between the force placed insurance company and the lenders ordering it. In 2012, bank force placed insurance programs came under fire, and the industry will almost assuredly be watched closer by regulators.

Foreclosure – The legal process whereby a lender exercises their rights under a mortgage, trust deed, or land sale contract, to cut off (or "foreclose") all legal rights of the borrower to the secured property. Foreclosures are governed by state law. In Oregon they may occur judicially or non-judicially. *[See, ORS Chapter 86 and ORS Chapter 88.]* Upon foreclosure, the lender usually holds a publically advertised sale at a specified time and place, designed to yield sufficient funds to repay the indebtedness and costs of sale. In many – but not all cases – if there is a shortfall in the proceeds obtained at the foreclosure auction, that amount, known as a "deficiency," may become a personal repayment obligation of the borrower to the lender - or the assignee of the lender, such as a collection agency.

Foreclosure Avoidance Measure - Commencing on July 11, 2012, Oregon law will require that qualifying banks must first offer mediation to borrowers before the Notice of Sale is sent notifying them of a non-judicial foreclosure of their residential trust deed. The purpose of the mediation is to find a "foreclosure avoidance measure" such as a short sale, loan modification, refinance, forbearance, deed-in-lieu of foreclosure, or other solution that avoids the foreclosure event.

Freddie Mac – See "Fannie Mae" above.

Front End Ratio – See, "Debt-to-Income Ratio," above.

G

Ginnie Mae – Stands for "Government National Mortgage Association" or "GNMA." This quasi-governmental agency acts as a secondary market for the purchase of federally insured or guaranteed loans, such as the FHA, DVA and the Rural Housing Service. Since these loans are guaranteed or insured, the original lenders are able to make lower interest rate loans with more flexible terms, thus enabling lower and middle income borrowers to obtain housing funds. The notes and mortgages or trust deeds are then pooled and sold as securities to investors who are guaranteed the timely payment of principal and interest.

Good Faith Estimate ("GFE") – A form given by lenders, mortgage brokers and other loan originators to borrowers when applying for a loan. The GFE provides an estimate of the settlement or closing charges and loan terms the borrower may expect if approved for their particular loan. Substantial changes to GFE rules became effective January 1, 2010 in an effort to provide more clarity, accuracy and accountability in GFEs. *[Substantial consumer information about good faith estimates can be obtained here.]*

Government Sponsored Enterprise ("GSE") – The primary examples are Fannie Mae, Freddie Mac, and Ginnie Mae. Although Fannie and Freddie were federally created initially as privately held entities designed to purchase mortgages in the secondary market, they were regarded as having the implicit "full faith and credit" of the United States behind them. Recent events have tended to confirm that the federal government will not let Fannie and Freddie fail, although they are in continuous need of infusions of money to stay afloat. In 2008 Fannie and Freddie were taken over by the federal government, although they still perform their initial mission of purchasing loans in the secondary mortgage market.

Graduated Payment Mortgage ("GPM") - Mortgages that have graduated payments, that is, commencing with lower monthly installments of principal and interest, and growing larger over a designated period of time, ultimately reaching a fixed level for the remainder of the loan term.

Grantee – A term used in a deed of conveyance to refer to the recipient of the real property interest.

Grantor - A term used in a deed of conveyance to refer to the person or entity making the conveyance of the real property interest.

Gross Income – One's income from all sources before adjustments for taxes and deductible items.

H

HAFA - Home Affordable Foreclosure Alternatives. Part of the Making Home Affordable Program that gives servicer guidance for expediting certain pre-foreclosure events such as short sales or deeds-in-lieu of foreclosure. It is reserved for borrowers who did not qualify for, or were unsuccessful, under a HAMP modification. *[See HAMP" below.]*

HAMP - Home Affordable Modification Program. This is a federal home loan modification program under the umbrella Making Home Affordable Program. HAMP is designed to facilitate and implement practices and procedures in the modification of home loans for owners of distressed properties.

HARP - This is a loan refinance program under the umbrella Making Home Affordable Program. It is designed to facilitate and implement practices and procedures in the refinancing of home loans for owners of distressed properties. Revised HARP guidelines, "HARP 2.0," have loosened LTV requirements such that lenders are permitted to make loans for homes up to 125% of their appraised value.

Hard Money Loans – Loans made at high interest rates to borrowers who may have credit issues or other constraints that make it difficult or impossible for them to obtain a conventional or federally guaranteed loan. Hard money loans focus less on the buyer's credit and more on the value of the security. They are usually processed and made within a short period of time.

Hazard Insurance – Insurance designed to cover an insured's loss such as fire, wind or other casualties. Sometimes referred to as "casualty insurance." Lenders usually require, as a condition to making a loan, that the borrower/homeowner maintain hazard insurance naming the lender as an additional insured to the extent of the lender's remaining interest under the mortgage or trust deed.

Home Equity Line of Credit ("HELOC") – A line of credit loan available up to a certain limit and secured by the borrower's equity in their property. There is generally no restriction on the use of the proceeds, and the homeowner can draw the funds out as he or she wishes, with repayment of principal and interest tied to the sums drawn out. Interest rates can fluctuate based upon variations in some third-party index. HELOCs permitted some homeowners to live beyond their incomes, and due to massive defaults of these loans in 2008 and thereafter, are much more tightly controlled than in the past. HELOCs were typically in a second or third position behind superior loans, so when the borrower defaulted on a superior loan, foreclosure wiped out the HELOCs security position. Also, when housing values collapsed, HELOC lenders found their loans had no security to attach to.

Home Equity Loan – Any loan secured by the borrower's equity in their home.

Homeowners Association ("HOA") or Unit Owner's Association – An association of owners of property within a particular development such as condominiums *[sometimes*

called a "Unit Owner's Association"], townhome communities, or planned communities and subdivisions. HOA's are required to be formed under many state laws with a primary purpose to oversee, manage and maintain common areas, enforce violations of the Conditions, Covenants and Restrictions or "CC&Rs," and collect association dues.

Homeowner Insurance – Hazard insurance *[see above]* covering losses due to certain listed casualties or risks such as fire, wind, etc. Normally requires the occurrence of a spontaneous "event" and does not insure against losses due to mold, mildew, termites, or other casualty that results in loss to the homeowner over a gradual period of time. Unless required by the lender, homeowner insurance does not normally include damage resulting from floods. Homeowner insurance can and should be obtained with additional coverage against *[non-auto related]* liabilities claimed against the homeowner for negligence or other acts.

Homestead Exemption – A "homestead" refers to the primary home in which one actually lives. Most states set a figure - in Oregon it is $40,000 for a single debtor and $50,000 for joint debtors - that is "exempt" from execution in the event of a forced sale of a home by a judgment creditor. This does not mean the home cannot be sold, but merely that a portion of the debtor(s') equity up to the permitted exemption amount may be retained from the sale proceeds. *[See, ORS 18.395]*

Housing and Urban Development ("HUD") – A federal agency whose mission it 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."

HUD-1 Settlement Statement – The document required to be completed and given to buyers and sellers at the time of closing. Also known as the "settlement sheet" or "closing statement." It itemizes all costs related to the closing of the transaction, such as *[on the buyer's closing statement]* the costs related to the loan, points, fees, prorated taxes, etc. On the seller's closing statement the HUD-1 discloses the funds received and disbursed, such as real estate commissions, escrow fees, title insurance premium *[if paid by the seller as is customary in Oregon]*, etc. The HUD-1 form was substantially revised effective January 1, 2010 and replaces all prior such forms. It now shows buyers the actual loan costs compared with those disclosed on the Good Faith Estimate or "GFE" *[See definition above]*.

Hybrid Loans – Any loan with terms that combine fixed rates and adjustable rates. Typically, they commence with a low fixed rate and within a three to ten year period, change to an adjustable rate. While the initial terms can seem attractive, they need to be closely reviewed before commitment in order to evaluate their long term affordability.

I

Impound Account – An account into which funds are placed as a "reserve" for payment to a third party for a given purpose. The most common impound accounts are required by

lenders for taxes and insurance; the borrower pays into the account on a monthly basis so that there will be sufficient funds for the lender to pay the annual insurance premium and yearly property taxes when due.

Index – When used in reference to interest rates or any other payment obligation, the term usually refers to an independent table of figures whose accuracy is not in dispute, which is used to calculate the increase or decrease in the applicable interest rate due under a loan. A common example is the consumer price index or "CPI." Many adjustable rate mortgages contain provisions tying the applicable interest rate to a certain index such as LIBOR, the London Inter-Bank Offering Rates. *[Note: In July, 2012, the accuracy of LIBOR did fall into dispute with the Barclay's scandal. – PCQ]*

Inflation - An increase in the cost of goods and services. As inflation increases, the value of the dollar decreases, since it takes more dollars to purchase the same goods and services.

Insolvency – A financial condition in which one's liabilities exceed their assets. Insolvency acts as an exception to the Cancellation of Date tax under IRC 108. For more, go to this link.

Interest – A charge for the use of another's money. Interest must be "earned" in that it only becomes due after the lapse of time. Interest is typically not paid in advance except in the case of discount points paid by a borrower to reduce the offered interest rate at the commencement of the loan. Such points are essentially the prepayment of interest so that the lender's yield is made comparable to what it would have been with the higher offered rate.

Interest Rate – The charge stated as an annual percentage of the unpaid principal balance due on a loan. For example, an interest rate of 5.00% on $100,000 is $5,000 annually if no principal is paid back during that year. If the loan called for 12 equal monthly payments of principal and interest, the 5.00% would be charged first to the interest due on the principal balance and the remainder would be applied to reduce the principal.

Interest-Only Option – A payment alternative during the early years of a loan. This option was created during the easy-credit years of 2005-2007 as a "sweetener" or incentive for borrowers to borrow more than they could normally afford if required to pay the fully amortized monthly payments of principal and interest. For example, a $300,000 30-year loan at 6.00% would carry monthly interest-only payments of $1,500. But the monthly amortization of principal and interest would be nearly $1,800 per month. And – assuming no principal payments for the first five years - if the loan reset at the end of the fifth year, the monthly payments of principal and interest amortized over the remaining 25 years would become approximately $1,932.00 per month

Joint Liability – Liability by two or more persons for the same debt or claim.

Joint and Several Liability - A claimant or creditor may proceed legally for recovery of a debt against all persons, i.e. "joint liability," or against only certain ones of the group, i.e. "several liability."

Judgment – In Oregon, a legal document for a sum of money, that if properly recorded in the public records, becomes a lien, or "charge," against all non-exempt property that the judgment debtor owns in the county of recording. A judgment may be recorded in one or more Oregon counties. Under most circumstances, the property encumbered by the judgment lien can be foreclosed, thus forcing a sale of the property to satisfy the debt due. In Oregon, absent some other agreement of the parties, such as a specified contract rate, judgments normally bear interest at the annual rate of 9.00%, are valid for ten years, and can be renewed for another ten years, if timely re-recorded.

Judicial Foreclosure – The process whereby a lender uses the court system to foreclose out a borrower's interest in the secured property. This entails the filing of a complaint for foreclosure in court. If the defendant borrower contests the foreclosure, he or she must file an "appearance" in court. This could consist of an answer, counterclaims, or a motion. In Oregon the vast majority of real property loans are secured by trust deeds, and therefore, most foreclosures occur non-judicially by "advertisement and sale." However, trust deeds may be foreclosed judicially, if the lender so decides. A "residential trust deed" under ORS 86.705(5) that qualifies for protection against a deficiency if the foreclosure is non-judicial, still qualifies for that protection if the foreclosure is judicial.

Jumbo Loan – A loan that exceeds Fannie Mae's and Freddie Mac's *["GSEs"]* applicable loan limits. Also known as a "non-conforming" loan. Rates on jumbos are typically higher than rates on conforming loans. In most parts of the country, except certain areas where real estate is more expensive, the GSEs' maximum loan is $417,000.

Junior Mortgage – A mortgage *[or trust deed]* that is recorded later in time than an earlier recorded mortgage or trust deed on the same property. In Oregon, subject only to limited exceptions *[such as construction liens]*, the time of recording determines the order of priority when multiple claims are made against the same property. The significance of being "junior" means that in the event of foreclosure by a superior lender, the holder of the junior interest could have their lien rights extinguished. In other words, they would have no further claim against the property to satisfy the indebtedness. This does not mean that the debt is eliminated by the loss of lien rights, but following foreclosure by the superior lien holder, the junior's claim is no longer secured by the property. In short, it becomes "unsecured" and can be discharged by a borrower's bankruptcy.

K

No entries.

L

Late Payment Charges – A lender-imposed charge assessed on a borrower whose payment is received after expiration of the grace period.

Leverage - The degree to which a person or business uses borrowed funds in the acquisition of assets or operation of their business. Since there are certain tax advantages associated with some leverage, such as deductibility of home mortgage interest, it can have certain advantages. Where leverage becomes problematic is when it exceeds the ability of

the borrower to repay, refinance or liquidate the assets or business. The housing and foreclosure crisis was brought on, in part, by the creation of innovative lending programs that encouraged 100%, or more, financing, which resulted in many borrowers becoming over-leveraged. Theoretically, this would not have been a problem if prices had continued to rise, homes continued to sell, and banks continued to lend and refinance based upon loose underwriting policies. The process of eliminating debt that hinders one's business operations is called "deleveraging."

LIBOR – Acronym for "London Inter-Bank Offered Rate." It is based on rates that participating London banks offer each other for inter-bank loans. LIBOR is one of the major indices for calculating interest rate adjustments on adjustable rate mortgages, or "ARMs." *[Typically, the borrower's interest rate includes a fixed margin or constant of X% that when added to the LIBOR rate equals the borrower's adjusted rate. In January, 2006 – in the middle of the credit bubble - the 12-month LIBOR rate was 4.9412%. In October 2010, the 12-month rate was 1.2275%. This means that for those ARMs indexed to LIBOR, many borrowers' interest rates declined significantly. This is why smart shoppers for ARMs sought adjustable rates that included lower margins, since it was this component that was fixed. A margin can never raise, just the indexed rate.]*

Lien - A charge against real property, the nonpayment of which can result in a sale of that property. Some liens are voluntary, such as mortgages and trust deeds, and others are involuntary, such as tax liens and judgment liens. A lien "clouds," or burdens the marketability of title to real property and prevents it from being conveyed to others unless the holder of the lien voluntarily removes it *[usually following payment of the amount due under the lien]*.

Lien Theory State – A "lien theory state" is one in which the law provides that the lender under a trust deed or mortgage holds merely a "lien" against the property, but legal title is held by the borrower. The opposite view is held in "title theory states," i.e. that the lender holds legal title to the property until it is paid off by the borrower. Oregon is a lien theory state.

Lifetime Cap – In an adjustable rate mortgage, or "ARM," *[see definition above]* the total maximum interest rate that may be charged at any time during the term of the loan. ARMs also have a minimum, or floor, below which the rate may not drop.

Line of Credit – The agreement by a lender to extend credit to an approved borrower for loan funds up to a pre-agreed amount. Such agreements frequently give the lender the right to require the borrower to periodically submit updated financial information in order to assure the lender that the borrower's financial condition has not materially changed for the worse while the line of credit is still open.

Liquid Assets – Assets that can quickly be converted into cash. Money market funds and company stock traded on a national exchange are typical examples.

Loan Fraud – The term is most frequently used to describe any intentional misstatement of material information at any stage of the lending process. Recently, it has been divided into two categories: Fraud committed in the acquisition of a home *[e.g. falsifying information on the application]*, and fraud committed for profit *[e.g. using a straw man, false appraisal or other means to obtain a loan with the intention of flipping the property for a profit shortly after closing]*.

Loan Officer – Although they may go by different titles, a loan officer is a representative of a lending institution whose responsibility is to secure prospective borrowers and provide documents, applications, credit and qualification information to them throughout lending process.

Loan Origination Fee – A fee or charge made by lenders, mortgage brokers or other loan originators for the administrative costs of processing a loan. The charge is usually stated in "points" with one point equaling one percent of the loan amount. The charge is paid at the time of closing. Since lender and broker fees can vary significantly, prospective borrowers should competitively shop their loan before making a final decision.

Loan Originator – *[See, Mortgage Loan Originator ("MLO"), below.]*

Loan Servicer – *[See, "Servicer" below.]*

Loan To Value Ratio ("LTV") – The ratio, expressed as a percentage of the appraised value of a home, that determines how much will be loaned. An 80% LTV means that the lender will loan up to 80% of the appraised value. It also implies that the remaining 20% will represent the amount of down payment the buyer will pay at the time of closing. *[If the borrower does not have the 20% down payment, he or she will have to secure mortgage insurance covering the shortfall. For example, if the borrower pays 5% down, he or she would need mortgage insurance insuring the ultimate owner of the loan – which may or may not be the original lender - against default up to 15% of the unpaid balance of the loan.]*

Lock-In – Refers to fixing or "locking" the interest rate that the lender will charge on the loan. Locks can range in the amount of time the lender will commit to, and when the lock period starts and stops. If the lock is lost before closing, the rate will "float" with the then-current market rate. If the locked rate is lost and the market interest rate at closing is significantly higher, the buyer may wish to "buy down" the rate with a lump sum payment at closing. If interest rates are falling, some borrowers may decline to lock in, preferring instead to let the loan rate "float."

Loss Mitigation – To "mitigate" damage is to try to reduce its negative impact. During the credit and housing crisis, in order to deal with the numerous loan defaults, some lenders developed their own loss mitigation departments to work out solutions with borrowers that avoided the need to foreclose on the property. Loss mitigation is also known as "foreclosure avoidance" and can include loan modification, short sale, or deed-in-lieu of foreclosure.

M

Margin – In adjustable rate loans ("ARMs"), an interest rate, usually in the 2% to 3% range (the "margin"), is added to the indexed rate to arrive at the total applicable ARM rate. The margin component of the ARM rate does not adjust – only the indexed portion. So when shopping various ARMs, prospective borrowers should always want to know *both* rates, since the margin rate will remain permanent throughout the life of the loan. In some cases, it is better to select a higher indexed rate and lower margin, since the former can drop, but the latter will never rise.

Market Value – Also expressed as "fair market value" or "FMV." The fair market value is the price a willing, ready and able buyer would pay to a willing, ready, and able seller for a property. Market value assumes that the parties are not operating under any external influences and have adequate time to negotiate. A price paid to a seller in a short sale who is facing an impending foreclosure may not reflect the market value. However, since the current market has a disproportionate number of short sales and bank sales – both of which can be for lower prices - they drive the sale price down, even though they would not normally be regarded as "market value" sales.

Maturity – The date a loan becomes fully due and payable. The maturity date will be found in the promissory note that accompanies the mortgage or trust deed.

Median Price – A term used to refer to the price of housing that falls into the statistical middle of the total number of homes for sale, or sold, in a certain area. Thus, a "median sale price" of $300,000 means that in a given sampling over a specific period of time, there are an equal number of homes sale above $300,000 as below $300,000.

Mediation – A private and confidential dispute resolution process where the parties use a neutral third person to reach consensus on settlement. The mediator does not make a "ruling" about who is right or wrong, and cannot force the parties to settle. The fact that the parties participated in mediation or that one party refused to do so is not admissible in trial. Commencing on July 11, 2012, Oregon law will require that qualifying banks must first offer mediation to borrowers before the Notice of Sale is sent to them. The Notice of Sale identifies the foreclosure sale date and must precede the sale by at least 120 days. The purpose of the mediation is to find a "foreclosure avoidance measure" such as a short sale, loan modification, refinance, forbearance, deed-in-lieu of foreclosure, or other solution that avoids the foreclosure event.

Merged Credit Report – One issued by a credit reporting company that contains combined information from multiple credit bureaus.

MERS – Mortgage Electronic Registration System. Electronic registration emerged as an intended solution to the problem of paper. All states require some method of tracking the successive transfers of real estate and the successive creation of interests in real estate (e.g. mortgages, liens, easements, etc.). The usual method is to require that the actual document creating or transferring the interest be recorded in the county where the property is located. The actual date and time of recording determines the priority of the transfer or

interest – such as the priority between a first and second mortgage. However, with the creation of the mortgage securitization industry (see "Real Estate Mortgage Investment Conduit – REMIC" defined below), lenders soon began to lose track of their paper – or neglect to create it in the first place. This problem was compounded by the fact that lenders frequently transferred mortgages between themselves without recording the transaction. This failure became serious when it came time to foreclose a mortgage, since the public record did not always identify the current owner of the mortgage. Enter, MERS, which was the mortgage banking industry's attempt to address the recordation problem by using electronic commerce to eliminate paper. Although it does not cover all mortgages across the country, by some estimates it has registered 65 million of them since 1997. The concept is that MERS acts as "nominee" on the actual mortgage document that is recorded in the county land records. According to their website (http://www.mersinc.org/) a "…loan registered through the MERS® System is inoculated against future assignments because MERS remains the nominal mortgagee no matter how many times servicing is traded. MERS as original mortgagee (MOM) is approved by Fannie Mae, Freddie Mac, Ginnie Mae, FHA and VA, California and Utah Housing Finance Agencies, as well as all of the major Wall Street rating agencies." However, with the onslaught of foreclosures, and the increasing number of borrowers fighting them, some courts are now rejecting the MERS concept of "inoculation," and instead, are insisting that if a lender is going to foreclose, the note and mortgage must actually be produced and registration with MERS alone is insufficient proof of current ownership of the paper.

Modification – A term in common usage today referring to an agreement between lender and borrower to change one or more repayment terms of a loan. Loan modifications can range from a temporary or permanent reduction in the interest rate to a deferral or reduction of the principal balance. In some cases the loan maturity date is extended and re-amortized (such as changing the principal and interest payments from a 30-year fully amortizing loan to a 40 year fully amortizing loan, thereby reducing the monthly payments). Evaluation of the benefits of loan modifications should be done by a qualified professional, as recent experience has suggested that there is a significant re-default rate on such programs.

Moral Hazard – A term used during the real estate and credit crisis to explain risk-taking behavior. The concept is that where downside risk is limited or insured against, it will encourage more risk-taking activity. The insurance industry is often used as an example, where the financial consequences of a certain activity are insured against (to a point), such as risky driving. Moral Hazard has also been used to refer to risk-taking activity of borrowers who took out loans they could not afford, believing that if they could no longer afford the payments, they could re-sell or re-finance out of the problem. On the lending side, the concept of Moral Hazard relates to the "Too Big to Fail" attitude of large lenders, who made risky proprietary wagers *[i.e. investments made on their own behalf and using their own capital]*, believing that the federal government would bail them out if they got into trouble.

Mortgage – The name of the instrument used by some lenders to secure the promissory note given by a borrower for repayment of their loan. The mortgage, once recorded on the

public record, serves as notification to the world that the lender holds a secured position on certain real property for repayment of a debt. The mortgage sets forth the lender's legal rights of foreclosure should the borrower default in repayment of the note. Although mortgages are legal in Oregon, they are rarely used as the security document of choice. Most Oregon lenders prefer to use trust deeds. *[See, ORS Chapter 86]* Mortgages and trust deeds serve the same purpose; they differ only in the terminology and the methods of foreclosure. Many people use the term "mortgage" interchangeably with "trust deed," and Oregon law provides that they are essentially the same, except with regard to the method of foreclosure.

Mortgage-Backed Securities ("MBS") – The name of the security document used by institutions such as Fannie Mae who purchase loans from banks in the secondary mortgage market so that the banks will have sufficient funds to continue lending. These mortgages are packaged and sold as securities *[e.g., shares of stock]* to investors. The collective mortgage payments of principal and interest made by the borrowers *[i.e., "the stream of income"]* are used to pay the investors who bought the securities. *[There are many different types of mortgage-backed securities with varying degrees of risk and each with their own name and set of abbreviations: RMBS = Residential Mortgage Backed Securities; CMBS = Commercial Mortgage Back Securities; CMO = Collateralized Mortgage Obligations; CDO = Collateralized Debt Obligations.]*

Mortgagee – The term used in a mortgage document to identify the lender. In Oregon, under trust deed law, the mortgagee is known as the "Beneficiary."

Mortgage Forgiveness Debt Relief Act of 2007 – This Act forgives income tax imposed on homeowners who have had their mortgage debt cancelled under Internal Revenue Code Section 108. To qualify, the debt must have been used to build, buy, or substantially improve a primary residence owned and occupied by the owner for two out of the last five years.

Mortgage Insurance – Insurance that is required of borrowers from conventional lenders *[as opposed to government insured or guaranteed programs, such as FHA and VA]*. Typically, such insurance is required when the borrower is unable to pay a minimum 20% down payment on their residential loan. The policy protects the lender against a portion of the loss that may occur if the borrower defaults on a loan. The premium is calculated into the monthly mortgage payment and continues until the unpaid principal falls below either 80% of the original loan, or *[usually following appraisal]* 80% of the then-current market value of the property. Mortgage insurance also is available through certain government agencies, such as the Federal Housing Administration (FHA) or private companies, such as Private Mortgage Insurance ("PMI"). During the years of rampant securitization of loans, *circa* 2004-2007, some banks placed their own mortgage insurance, or "MI," on loans, without the knowledge or consent of the borrowers. This creditor-placed MI was done as a form of "credit enhancement" of the paper, i.e. so it would receive a higher rating by the credit agencies, and thus be more attractive to investors.

Mortgage Insurance Premium (MIP) – The premium charged to a borrower for mortgage insurance. MIP is currently tax deductible under certain circumstances.

Mortgage Interest Deduction - The deduction one may take against gross income for interest payments made on primary and secondary residence. There are many exceptions and stipulations, the main one being that the total mortgage debt may not exceed $1,000,000.

Mortgage Qualifying Ratios – The ratios or guidelines used by many lenders to calculate a borrower's capacity to afford a certain mortgage and set of monthly mortgage payments. These ratios compare the borrower's monthly income to their mortgage expenses. *[See, Debt-To-Income Ratio, above.]*

Mortgagor - The term used in a mortgage document to identify the borrower. In Oregon, under trust deed law, the mortgagor is known as the "Trustor" or "Grantor."

N

Negative Amortization – A type of loan whereby the monthly interest payment is insufficient to pay the monthly interest due under the promissory note. The result is that the interest shortfall is added back to the principal balance thus increasing the principal amount due under the loan. During the credit bubble, when housing prices skyrocketed, some lenders offered loan programs that permitted borrowers to pay less than the total interest due for a period of time. They were sometimes referred to as "Neg-AM Loans." These programs were attractive to borrowers who could not afford interest-only or fully amortizing *[principal and interest installments]* loans and believed that housing prices would continue to rise so that eventually they could refinance out of their current loan or sell the property to extricate themselves from the compounding effect of the negative amortization process. When housing prices dropped, many of these borrowers found themselves "underwater" - meaning that they owed more on their loan than the home was worth. Negatively amortizing loans are not illegal in Oregon, but are subject to certain statutory regulation.

Negative Equity – This term refers to the difference between the current balance of all recorded mortgages and other liens on a property (residential or commercial) and its present fair market value. For example, if the mortgage(s) total(s) $300,000 and present fair market value is $200,000, the negative equity is $100,000. In today's vernacular, that property is "underwater."

Net Income – The total income from all sources, less all expenses for the same period.

Net Present Value ("NPV") – A mathematical analysis of today's present value of an investment, such as real property subject to a loan, after the occurrence of a future event, such as foreclosure or loan modification. *[See, NPV Test, below.]*

Net Present Value Test ("NPV Test") - A test used by banks and servicers for all loans being considered for a Home Affordable Modification under HAMP *[see above]*. This test applies regardless of whether the loan is a Fannie Mae mortgage or not. It is a mathematical model developed by the Treasury Department to determine the NPV of a borrower's property based upon two opposite scenarios, or outcomes: (1) The net present value if the requested foreclosure avoidance event (e.g. loan modification, short sale, deed-

in-lieu) is approved, versus (2) The net present value if it is foreclosed. If the NPV figure is higher under the pre-foreclosure scenario, the result is declared "positive" and the requested foreclosure avoidance solution may be approved - since it is in the economic interest of the loan's owner *[e.g. the bank or investor]* to do so. If the NPV analysis is higher under the foreclosure scenario, the test results are deemed "negative" and the borrower's requested pre-foreclosure solution will likely be denied.

Net Worth – One's financial worth arrived at by deducting all liabilities from all assets including cash.

No Cash-Out Refinance – A refinancing of the unpaid principal balance of an existing loan where the borrower does not receive any of the funds from the refinancing.

No-Cost Loan – A broad term referring to any of several types of loans that do not include typical borrower costs such as title insurance, escrow fees, closing costs, appraisal fees, recording fees, etc. No points may be charged, as well. The purpose of such loans is to reduce the upfront cost to the buyer. The interest rate may be higher to make up for the fact that the lender is initially absorbing these costs.

No-Doc Loans – These loans were a staple of the lending industry during the easy credit years of 2004 – 2007. They were usually based upon the borrowers' "stated income" or "stated assets." Often referred to as 'liar loans," since by their nature, they encouraged or resulted in borrowers misstating their financial qualifications to obtain the loan. Lenders demanded little or no documentation for the loans they made to borrowers, so long as the borrowers' credit met the lender's guidelines. The reason for this lax or non-existent underwriting was due, in part, to the widely held belief that property values would continue to rise, so neither borrower nor lender was at much risk. The other reason for the poor underwriting practices was that at the mortgage origination level, no one really cared.

Non-Judicial Foreclosure – In Oregon, trust deeds are primarily foreclosed non-judicially. That is, the process occurs without the filing of a foreclosure complaint in court. Instead, the trust deed foreclosure process is conducted by advertising in a newspaper of general circulation and by mailing of the appropriate documentation to all persons whose interest is being foreclosed or who may have some recorded interest in the property. Under ORS 86.770(2), a non-judicial foreclosure of a residence means that there can be no deficiency to pursue by the lender against the borrower.

Nonperforming Asset – A term frequently used today to refer to loans being carried on a bank's books that are significantly delinquent and not being repaid.

Note – See Promissory Note.

Note Rate - The interest rate stated on a promissory note that is secured by a trust deed or mortgage.

Non-Conforming Loan – A loan that exceeds Fannie Mae's and Freddie Mac's loan limits. *[See Conforming Loan.]*

Notary Public – One who is licensed by a public body to certify the authenticity of a signature. Under Oregon law, recording a document on the deed records and other public records requires notarization. Before such certification, the notary is required to verify the identity of the signer and actually observe them signing the document. It is illegal to notarize a document that was pre-signed outside the presence of the notary.

Notice of Default or "NOD" – A written notice informing one obligated under a contract that they are in default. Under Oregon's trust deed foreclosure law, the Notice of Default is recorded in the public records of the county in which the property is located, and published in a "newspaper of general circulation." This recording officially commences the non-judicial foreclosure process in Oregon. If the property being foreclosed is a residential trust deed *[defined below],* the borrower must be notified of the opportunity to mediate with the lender in order to try to reach consensus upon a foreclosure avoidance measure *[defined above]*.

Notice of Sale – A written notice sent to a borrower, notifying them of a non-judicial foreclosure of their trust deed. It identifies the amount of the default, the sale date, and their rights to "cure" the default and prevent the foreclosure by paying the amount then due, plus statutory costs and attorney fees. The Notice of Sale must precede the actual sale by at least 120 days. Effective July 11, 2012, a notice must be given to the borrower of the opportunity to mediate with the foreclosing bank in an effort to arrive at a "foreclosure avoidance measure" *[defined above].* This notice of mediation must be given at least sixty days prior to mailing or service of the Notice of Sale.

O

Origination Fee – The charge for processing a loan. It includes preparation of the loan documents, submitting and evaluating the application, verifying the borrower's credit, and coordinating and arranging other related activities, such as the appraisal, etc. It is frequently expressed in "points" with one point equaling one percent of the loan amount.

Owner Financing – A property sale in which the seller agrees to "carry-back" or "take back" a promissory note secured by a trust deed, or mortgage, from the buyer of the subject property. The debt may be for some or all of the purchase price. Owner financing is most common when the buyer cannot qualify for a loan from a bank, or cannot come up with all of the down payment required by the bank. For example, in the case of an 80% bank loan, a buyer with only 10% down may try to get the owner to "finance" the additional 10%, by taking back a note and trust deed for that amount. *[The owner does not actually pay cash to the bank on behalf of the buyer at closing.]* Some lenders holding a first trust deed or mortgage may prohibit this, as they want to have the buyer fully invested up to the entire 20%. Some sellers may elect to sell on a land sale contract, in which case they continue to hold title in their own name until the contract is paid off. A land sale contract gives the seller more remedies upon a buyer's breach than those available if the seller took back a note and trust deed.

Owner's Policy of Title Insurance – The policy issued to the purchaser-owner of real property guaranteeing to them that they have marketable title, free and clear of any objectionable liens or encumbrances. An owner's policy will include a list of exceptions to

this guarantee for many standard items recorded against the property such as deed restrictions, utility easements, and current, but unpaid property taxes. And since the title insurance company does not physically inspect (nor survey) the property – they just review the public records – the owner's policy also excludes those matters an inspection or survey would reveal, thus leaving it to the buyer and buyer's experts to perform these on-site functions. The "preliminary" title report is issued at the start of the transaction, shortly after escrow is opened. It is not "insurance" and is preliminary only. The owner's policy is issued at the end of the transaction, shortly after closing ("settlement"). It not only informs the buyer-owner of the status of record title, but it also insures them that there are no undisclosed title defects, subject only to the standard and special exceptions. In Oregon, it is customary for the seller to pay for the buyer's owner's policy.

P

PITI – Stands for "Principal, Interest, Taxes, and Insurance" which make up the bulk of most borrowers' monthly installments to the lender for repayment of the residential purchase loan. The taxes and insurance are often held by the lender in an "impound account" *[defined above]* and paid on an annual basis.

Partial Payment – The payment of less than the total amount owed. Partial payments normally do not have to be accepted by lenders where the loan documents specify a minimum monthly installment.

Payment Cap – A limit or ceiling on the amount of any single increase, in terms of dollars, on an adjustable rate mortgage ("ARM") *[defined above]* due to an increase in the index to which the interest rate is tied. The term also refers to the size of any installment payment due upon adjustment in the interest rate. A payment cap *[referring to dollars]* is not the same as an interest rate cap *[referring to the percentage interest rate charged for the loan at any given time]*.

Payment Change Date – The date when monthly installments on an adjustable rate mortgage, or "ARM," or a graduated-payment mortgage, or "GPM," will change. Generally, the payment change date occurs in the month immediately following the interest rate adjustment date.

Payment Due Date – The date in the promissory note and mortgage, or trust deed, when periodic payments, usually monthly, are due. Most loan agreements have a payment due date, followed by a grace period of a few days, and a date after which a late charge is assessed to the borrower.

Plaintiff – One who brings a claim in court seeking some remedy or relief. If the claim is brought in arbitration, the plaintiff is called the "claimant."

Points – A lender charge made to the borrower for a loan. A point is equal to one percent of the principal amount of a mortgage or trust deed. For example, one point on a $300,000 loan is $3,000. Lenders may charge points for many reasons, such as to increase the yield, i.e., the return, on the loan, to cover closing costs, to charge for loan processing, to issue a loan lock beyond a fixed period of time, or other reasons. Points may be charged at the

borrower's request to "buy down" the interest rate so that the monthly payments are lower. Points are typically paid at the time of closing. Sometimes the points are shared between the seller and the buyer/borrower.

Pooling and Servicing Agreements ("PSAs") – PSAs act as the governing document when a large pool of loans is sold into the market as securities. Many such pools took the form of REMICS *[see definition below]* which acted as a trust document, defining the rights of the investors and the duties of the trustee and servicer.

Power of Attorney - A legal document recognized in Oregon and most states, granting certain authority to one person to take binding legal action on behalf of another. The person receiving the power is called the "attorney-in-fact." In Oregon, powers of attorney should be recorded if they deal with land. A limited power of attorney grants only limited powers to the attorney-in-fact. A general power of attorney gives nearly unlimited powers. The authority granted under a power of attorney ceases upon death or incapacity of the person granting it. However, a "durable power of attorney" is intended to survive incapacity in order that a selected third party is allowed to make major end of life decisions. Durable powers of attorney are recognized in most states, including Oregon.

Pre-Approval Letter – A written letter from a lender, mortgage broker, or other loan originator, stating that based upon verification of certain financial information from the applicant, including such things as a credit check, debt to income analysis, and verification of down payment, they would process a certain size loan for the borrower. Pre-approval letters contain significant limitations such as appraisal review, and are not a binding commitment to make the loan. Final loan commitment can only be made by the loan underwriter, which normally does not occur until very late in the loan process, shortly before closing of the purchase transaction.

Preliminary Title Report – When a policy of title insurance is ordered, the title insurance company first issues a "preliminary" title report, informing their prospective insured of the status of the title. If a defect appears on the public record, it should be disclosed in the preliminary report, and the prospective insured can decide whether to complete the transaction *[e.g. a property purchase, a bank refinancing, or a bank loan]*, perhaps by first requiring removal of the objectionable defect on title.

Pre-Qualification Letter – This document is far less reliable than a pre-approval letter. In the pre-qualification letter the loan originator or mortgage broker is making a representation concerning the borrower's capacity to qualify for a loan without actually reviewing any of their financial data. The originator is simply relying upon the prospective borrower's oral representations.

Predatory Lending – A term used to describe any unscrupulous loan practice by lenders and others involved in loan origination. Most states have regulations and statutes against such tactics, especially in light of the events of 2005 – 2008 when loans were made to borrowers who did not understand the terms and were frequently incapable of repayment.

Prepayment – The payment of all or a part of a loan balance prior to the end of the term. A partial prepayment does not eliminate the obligation to pay the regular monthly installments. A full prepayment satisfies the borrower's entire obligation under the note and mortgage or trust deed. Some lenders have restrictions and limitations on full prepayment. A typical prepayment penalty fee consists of a significant charge, usually stated as a percentage of the amount being prepaid. The reason for such penalties is because the loan terms may contain a low "teaser" interest rate early in the term and prepayment would deprive the lender, or the investors who buy the loan package in the secondary market, from receiving their expected yield.

Prepayment Penalty – *[See, "Prepayment".]*

Prime Borrower – One who, due to his or her excellent credit, credit rating, and other lending criteria, is able to receive the best interest rate and terms from a lender. Those at the other end of the credit spectrum became known as "sub-prime" borrowers, and were charged higher fees and interest rates. *[See, sub-prime loans, below.]*

Prime Rate - The interest rate a bank charges its preferred customers. The rates are published in the business media and are frequently used as the index for interest rate adjustments on ARMs or lines of credit. The Prime Rate is usually adjusted in correlation to the adjustments of the Federal Funds Rate.

Principal - The amount initially borrowed from a lender. As the loan is paid back, the borrower's monthly installments are applied first toward interest and then to reduce the principal balance of the loan. On a fixed rate fully amortizing loan the principal balance is gradually reduced over the life of the loan.

Principal, Interest, Taxes, and Insurance – See "PITI," above.

Private Label Secondary Mortgage Market – The market that exists to purchase loans from banks. It works that same as Fannie Mae and Freddie Mac, in that it bought loans, packaged them into pools and sold these as securities to investors. However, while Fannie and Freddie only bought loans that "conformed" to their underwriting standards, the private label market bought riskier, non-conforming and sub-prime loans. During 2005 – 2007, the ratings agencies were giving investment grade ratings to these pools of subprime loans, which encouraged investors to purchase them. Then in the third quarter of 2007, the agencies made mass downgrades in these securities, which resulted in the collapse of the credit markets. Once housing loans became tight there were fewer buyers and values plummeted. Today there is no viable secondary mortgage market.

Private Mortgage Insurance ("PMI") – See, "Mortgage Insurance," above.

Promissory Note – The legal instrument that sets forth the amount of a debt due on a loan, including the repayment terms such as the interest rate, monthly payments and due dates. If the promissory note is accompanied by a trust deed or mortgage recorded on the borrower's real property, it is said to be a "secured" note.

Property Tax – In Oregon, the charge imposed by the county government to fund public services such as schools and law enforcement. The total amount of property tax is determined annually through a budgeting process and then assessed based upon a percentage per $1,000, known as "the millage rate," of assessed value of the property located in the county.

Public Record – Information contained in the records of all public institutions such as the courthouse, the Secretary of State, the Corporation Commissioner, the Department of Justice, etc. These records pertain to certain events such as court filings, recorded liens for loans, taxes, court judgments, bankruptcies, criminal convictions, corporate filings, etc. Under Oregon law, certain public record information *[particularly that contained in the county courthouse records dealing with land]* imparts what is known as "constructive knowledge" to the world as to the information contained in those records – even though one may have no "actual knowledge" of the event recorded. It is for that reason that title insurance is important when real property is purchased, since the title insurer checks the public records to determine the status of the title being conveyed, and then informs the buyer of that information before closing of the transaction. The information provided is then listed on a policy of title insurance, essentially guaranteeing to the insured the correctness of the title information contained on the public record.

Q

Qualifying Ratios – See "Mortgage Qualifying Ratios."

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Quitclaim Deed – In Oregon this is one type of deed that can be used to convey an interest in real property. The grantor conveying a quitclaim deed makes no warranties about the quality of the title conveyed – and, in fact, is not even representing that he/she is conveying any interest at all. There are technical reasons why this is appropriate in all cases, and frequently, a bargain and sale deed may be more appropriate. Before using or accepting a quitclaim deed the parties should secure competent advice.

Rate Cap – The interest rate limit on an adjustable rate mortgage *["ARM"]* or trust deed, fixing much the interest rate may change upon (a) a single adjustment, or (b) over the life of the loan.

Rate Lock – A lender commitment to the borrower guaranteeing them a specific interest rate if they close the loan within a fixed period of time. If the rate is not locked it is said to "float" which, during a period of falling interest rates, gives the borrower the ability to wait and see what the market will do. Most rate locks do not give the borrower the ability to secure a lower rate if they should decline by the time of closing. Most locks are free for 30-60 days. There can be lender charges for longer locks ranging from 1/4 to 1/2 of a point, with a point being 1% of the loan amount.

Real Estate Mortgage Investment Conduit ("REMIC") – A highly complex and sophisticated vehicle used to hold pools of mortgages on real estate. If properly created

and operated, REMICs are not taxed on the income generated. This is what is meant when it is said that REMICs are not taxed at the "entity level." Instead, only the investors are taxed when the REMIC distributes dividends. These vehicles are governed by Sections 860A through 860G of the Internal Revenue Code. The operation of the REMIC is governed by a Pooling and Service Agreement or "PSA," *[defined above]* which defines the roles and responsibilities of the REMIC's Trustee and Servicer. Investors' returns are based upon the amount of risk they are willing to accept. For this reason, REMICs are divided into "tranches" *[French for "slice"]*, with each tranche consisting of bundles of loans rated by their risk of default *[e.g. subprime, Alt-A, Alt-B, prime, etc.]*. The greater the risk, the greater the return – assuming there is no default. When mortgage defaults occur within a REMIC, the investors' rights are prioritized by the terms of the PSA, such that those with higher risk get paid only after the investors holding lower risk shares or "certificates."

Real Estate Owned ("REO") – This term refers to bank-owned real estate that it has recovered back from a borrower in default under their note and mortgage. Property goes into a bank's REO department either upon completion of a foreclosure or upon execution of a voluntary "deed-in-lieu of foreclosure" by the defaulting borrower. *[Note: A borrower cannot "force" the lender to accept a deed-in-lieu of foreclosure – or vice versa. It must be consented to by both sides. - PCQ]*

Real Estate Settlement Procedures Act ("RESPA") – A federal law designed to protect and inform the consuming public in residential real estate transactions and the residential lending process, by requiring the full disclosure of all settlement costs, practices, and affiliated business relationships between settlement service providers such as real estate brokers and mortgage and title companies. There are some critics who assert that RESPA actually results in higher, rather than lower, closing costs to the consumer.

Real Property – All land, regardless of whether it is improved with a structure or not. Personal property that is "affixed" to land or buildings is a "fixture" and is transferred along with title to the real property.

Recorder - A public official at the municipal, county or state level whose job it is to take documents for recording, keep records of date and time of recording, the name of the parties, identity of land affected, and make sure that the document is actually recorded with the original being returned to the person designated in the document. A recorder may be known by various names, such as a "County Clerk," "Records Administrator," etc.

Recording – The act of filing a document with the proper official in the appropriate state, county or municipal government recording office. In real estate, the type of documents that are necessary to be recorded include deeds, mortgages, trust deeds, documents recording the payoff of loans *[e.g. satisfaction of mortgage or deed of reconveyance]*, easements, judgments affecting land, lis pendens, options, land sales contracts *[or memoranda thereof]* and virtually any other original document dealing with the conveyance of an interest in land. Recording is not necessarily required to make a document legally binding between the parties; it just establishes priority in the event of competing claims.]

Recording Fees - Charges assessed by the recording office for taking, processing and returning documents delivered for recording in the public records.

Redemption, Right of – The right, provided by state statute, which a borrower may have to repurchase from the bank the property taken in foreclosure. The cost to repurchase would be the amount that the bank is owed upon completion of the foreclosure, plus the costs and fees of foreclosure. In Oregon today, homeowners have a six month right of redemption following a judicial foreclosure; but no right of redemption, following a non-judicial foreclosure. Note that today, most rights of redemption are illusory, since the market value of the property is less than the indebtedness owed against it. In other words, most foreclosed borrowers would not want – even if they had the funds – to repurchase their foreclosed home, since the cost to do so would exceed the value of the home.

Refinance – The pay-off of an existing promissory note by using funds obtained from the same or another lender. Some refinancings merely pay-off the existing note, while others may permit the borrower to take money out of the transaction for a different purpose. This is called a "cash-out" refinancing. Many refinancings occur in order to take advantage of falling interest rates, thereby reducing the borrower's monthly payments. Some banks strictly limit the loan-to-value ratio for refinancing *[e.g. 60% of the appraised value]*, such that if the borrower has little equity they would be unable to refinance. This was the problem confronted by many borrowers who sought to get out of their adjustable rate mortgages, but were unable to do so because the market value had fallen to the point where they had little or no equity. HAFA *[defined above],* is the federal Making Homes Affordable program that permits some borrowers to refinance their current loans, even though they are more than the appraised value of the property.

Reinstatement Period – Also known as the "cure" period, which is the time frame during the non-judicial foreclosure process that a borrower may repay the amount of the arrears plus statutory costs and fees. It commences from the Notice of Default, and continues up to five days before the scheduled sale. Within the five day period, the only way the borrower may prevent the foreclosure, is to pay the entire accelerated principal balance, plus accrued interest, penalties, costs and fees.

Repayment Plan – An agreement during the loan modification process where the lender and borrower agree upon a repayment schedule that applies a portion of their installment payments toward reduction of the accumulated arrears.

Residential Trust Deed – Oregon law provides that this is trust deed on property upon which are situated four or fewer residential units, one of which is occupied by the grantor, the grantor's spouse or the grantor's minor or dependent child that occupies it as a principal residence *at the time a trust deed foreclosure is commenced*. As of July 11, 2012, the underscored language will read as follows: *"at the time a default that results in an action to foreclose the obligation secured by the trust deed first occurs."* The reason the underscored language is important is that Oregon law prohibits a lender from recovering a judgment against a borrower following the foreclosure of a residential trust deed. Thus, after July 11, 2012, so long as the borrower is in the primary residence at the time of his/her default under the note

and trust deed, no personal deficiency liability can result if the property is foreclosed so long as that default led to the ultimate foreclosure. Under certain circumstances, if the first position lender forecloses a residential trust deed where there is also a second mortgage, that second lender may not obtain recovery for any deficiency either.

Reverse Mortgage – A mortgage product for homeowners age 62+ allowing them to use their home equity as a source of funds to draw upon before they move out of the home or pass away. The mortgage may be for a lump sum, or withdrawn on a monthly or periodic basis, similar to a line of credit. FHA's reverse mortgage program is known as "HECM" or "Home Equity Conversion Mortgage."

Risk-Based Scoring - A computerized statistical analysis using models and formulas to estimate the future performance of prospective borrowers. Scores, such as FICO *[see definition, above]* apply risk-based scoring through the evaluation of one's credit history, income and other financial information.

Robo-Signers – A term of recent origin used to describe low level personnel inside certain banks, servicers, and default servicing companies, whose job it was to sign the documents necessary to complete a foreclosure. These people routinely placed their signatures on hundreds of legal documents a day, which they did not read or understand. However, they were given false titles that created an impression they had reviewed the records and understood what they were signing. Anecdotal reports indicate that the practice was widespread among the major lenders, servicers and processors, and included the signing of foreclosure-related documents, the use of questionable or non-existent powers-of-attorney, and the improper or illegal notarization of signatures. The practice placed in jeopardy the legality of non-judicial foreclosures and the resulting title to the foreclosed properties. For these reasons, in 2011 many lenders temporarily suspended all non-judicial foreclosure throughout Oregon and the rest of the country for a period of time, in order to review their procedures.

S

Second Mortgage – A mortgage or trust deed that has been recorded second in time behind an earlier recorded mortgage or trust deed. Second mortgages can be risky to the lender because if the borrower defaults on the first mortgage and a foreclosure occurs, the second mortgage holder will also be foreclosed, and thus lose their security interest in the property. The only way for the holder of the second mortgage to preserve its security in the event of a foreclosure by the first holder is to pay off the first mortgage so that no one is ahead of them on the public record.

Secondary Mortgage Market – The financial market that consists of investors and institutions engaged in the purchase of loans from banks and other lenders. Fannie Mae and Freddie Mac, the two "government sponsored enterprises" or "GSEs," *[see definitions above]* are the primary players today, as there is little private money available in the secondary market. The non-GSE secondary market consisted of private investors and similar entities, and was known as the "private label market," defined above. Following the

credit and lending crisis of 2008 and thereafter, the private label secondary mortgage market has dried up, leaving Fannie and Freddie as the two major players.

Securitization – The process whereby assets or debt instruments are "pooled" or "packaged" together and sold to investors. Since the investors do not directly control these pools, the products are regarded as "securities" and regulated by the federal Securities and Exchange Commission or "SEC," and their state counterparts. Debt, such as mortgages, and their accompanying promissory notes, in real estate, are packaged and sold to investors, who acquire the right to receive the cash flow. *[See, "Real Estate Mortgage Investment Conduit," or "REMIC" above.]*

Security – Refers to an asset, such as one's home, that is used to "secure" the homeowner's repayment of a loan. The debt, represented by a promissory note, is then said to be "securitized" by another instrument, such as a trust deed or mortgage that is recorded in the county where the property is located. The security document gives the lender a right, upon borrower default, to force the sale of the property to satisfy the outstanding indebtedness. *[See "Foreclosure," above.]*

Seller-Carried Financing - An arrangement where the seller of property "takes back" a note and trust deed, or mortgage, or land sale contract, from his or her buyer to cover the unpaid portion of the purchase price. Seller-carried financing that is behind a first mortgage, can be risky for sellers since, if the buyer defaults to the bank, it will foreclose both the buyer's ownership interest and the seller's subordinate lien. It can also be risky to buyers, who may make their payments to a seller who does not remit payment to the lender. All seller-carried financing should be reviewed by separate legal counsel for sellers and buyers.

Servicer – The entity that takes over the responsibility of collecting payments on a loan, impounding and paying taxes and insurance, and generally being responsible to monitor a borrower's performance under the loan. Some banks service their own loans, but most delegate that responsibility to third party servicing companies. Most servicing agreements give the servicer broad authority to engage in foreclosure and foreclosure avoidance *[e.g. modification, short sale, deed in lieu]* decisions. Many big banks also act as servicers for third parties, such as Fannie Mae, Freddie Mac and private securitized loan pools in the private label secondary market. Many borrower complaints during the foreclosure crisis were based upon servicer abuses in the loan modification process.

Settlement – Can be used as a verb, describing a process, or noun, describing an event. In Oregon, the term "closing" is more commonly used than "settlement." Closing can describe a specified date after which the transaction is deemed "dead" due to nonperformance of the seller or buyer; or it can describe the process occurring in a real estate sale transaction where money and loan funds are deposited along with transactional and loan documents, calculations are made for the parties, and documents are recorded. Typically, the right of possession occurs on or shortly after closing. The term "settlement" can also refer to the process whereby a dispute is resolved by agreement of the parties.

Settlement Statement – The HUD-1, which is the document required under RESPA *[defined above]* and given to seller and buyer, itemizing all of the settlement or closing charges associated with the financing and/or purchase of a property. Effective January 1, 2010, HUD *[defined above]* significantly changed the HUD-1 settlement statement and imposed penalties if certain estimated closing costs set forth on the Good Faith Estimate *[defined above]* exceeded certain legal "tolerances" or limits expressed by a percentage of the estimated amount. The term "closing statement" is the same as the "settlement statement."

Short Sale – The sale of any property, commercial or residential, where the sale proceeds are insufficient to pay off all liens, encumbrances, commissions and other closing charges that must be paid at the time of sale. Holders of the recorded liens *[e.g. lenders]* must reach agreement with the seller before a short sale will be approved. Short sales can result in potential tax liabilities for debt forgiveness and unpaid liability under the promissory note *[see "Deficiency" defined above]*, and should be reviewed by experts before closing.

Statutory Deed – In Oregon there are statutory "short form" versions of the four major deeds used in Oregon *[General Warranty, Special Warranty, Bargain and Sale, and Quitclaim]*. By referencing the statute in the deed itself, the conveyance carries the same legal effect as if the more formal and lengthy form was used.

Statute of Frauds – The statute setting forth what type of agreements must be in writing and signed in order to be enforceable. In Oregon the list is found in ORS 41.580. It includes conveyances of an interest in real estate; leases exceeding one year; and compensation agreements hiring an agent for the sale or purchase of real estate.

Statute of Limitations – The period of time the law allows one to bring a legal claim in court. The claim expires after the statute of limitations has run. As to claims regarding title to land, the statute of limitations is ten years. The statute commences from the date that the aggrieved party knew or should have known of their claim and it runs for ten years. The statute of limitations may be suspended (or "tolled") for various reasons, such as minority *[under age 18]* and incompetency.

Strategic Defaults – A term currently used by Fannie Mae and some lenders to refer to homeowners who default on their loans – that is, stop paying – even though Fannie believes they actually could afford to pay the loan. Fannie has threatened retribution by making these borrowers wait longer to get another home loan. Since Fannie buys most bank originated residential loans – and is, along with other GSEs *["Government Sponsored Enterprises," defined above]*, the only player in the secondary market today - it can seemingly make its own rules. Several Congressmen and others have openly criticized Fannie for this pronouncement, and have sought to dissuade it from enacting any retaliatory policies. It should be noted that in the commercial real estate industry – where the loan dollars are much greater than in the residential industry – many large and well respected companies have routinely engaged in "strategic defaults" with little governmental or lender outcry.

Sub-Prime Loans – A finance industry term used to refer to loans made to borrowers with very low FICO scores or those who are otherwise credit-challenged. Between 2004-2007, when loan underwriting guidelines were less stringent, a higher rate of interest was charged to compensate the lender for the borrower's increased risk. Because subprime loans provided greater yields *[i.e. return on investment]* due to the higher interest rates, they were sought after by investors during this period. Moreover, a little understood additional charge known as the "yield spread premium" was being paid by borrowers at closing that awarded mortgage brokers a significant extra payment above and beyond their loan fees for placing borrowers into sub-prime loans. When the credit markets tightened and real estate values collapsed, many subprime borrowers defaulted, thus resulting in a crisis in the financial markets and secondary mortgage market which had invested heavily in these risky loan products. Although sub-prime loans were the first to fail, today the credit and mortgage crisis has affected even prime loans *[those made by banks to their best borrowers]*. Due to unemployment, tight credit, and stagnant or falling real estate values, there is little opportunity for many homeowners to extricate themselves from their distressed housing problems through resale or refinancing.

Subordinate Loan or Lender – In Oregon, the time of recording a legal interest in land, such as a trust deed securing a loan, determines whether a lender's interest is superior or inferior to another lender. This priority is especially significant when there are competing liens recorded on the same property and the equity in that property is insufficient to pay them all off at the time of closing of a sale or foreclosure. The subordinate lender only gets a share of the remaining proceeds after the superior lender has been paid in full.

Surrogate-Signers – The term "surrogate" means substitute. As if "robo-signers' weren't bad enough – signing thousands of bank foreclosure documents with no authority or knowledge of what they were attesting to or signing – "surrogate signers" were robo-signers who signed each other's signatures, rather than their own.

T

TARP (Troubled Asset Relief Program) - A federal financial bailout program enacted as a part of the Emergency Economic Stabilization Act of 2008. It was established to manage up to $700 billion in Treasury funds *[later reduced to $475 billion by Dodd-Frank]* intended to address the bank financial crisis of 2007-2008. The purpose of TARP was to create bank liquidity. Essentially, what began happening to financial institutions in 2008 was that they were so highly leveraged they were unable to continue the daily borrowing they needed for their own operations. Credit froze up. Bear Stearns collapsed and was acquired for pennies on the dollar; Lehman Bros. filed for bankruptcy; Fannie and Freddie were taken over by the federal government in receivership. The TARP funds were intended to "deleverage" the banks, so they could survive. There is much criticism about the program, but in reality, it kept the U.S. financial crisis, and world economy, from becoming much worse.

Title – One's right of ownership to real or personal property. A deed is the physical document evidencing one's title to real property and a bill of sale is evidence of one's title to personal property. Upon each successive conveyance of title a new deed or bill of sale is

given from current owner to the new owner. The successive chain of conveyances of title from sellers to buyers is referred to as the "chain of tile."

Title Insurance Company – In Oregon, title insurance companies specialize in the examination and insuring of title to real estate. Attorneys are not usually involved in the process as they are in some states. Most title companies in Oregon also have an escrow department that provides closing, aka "settlement" services to the parties.

Title Defect – Anything affecting the marketability of title to real estate, such as a gap in the chain of title where there is no evidence in the deed records showing that one transferring title ever received the same title from someone else. Sometimes title defects occur because an owner died and the estate was never probated, so it is unclear whether any of the heirs still have an interest in the property. A title defect is also referred to as a "cloud" on the title.

Title Insurance – A policy of insurance that that is typically issued by a title company to buyers and lenders, effective as of the date of closing and funding of the loan. The buyer's policy is called an "owner's policy" and it guarantees the marketability of the title subject to two sets of exceptions. The first set are called "standard exceptions" as they are regularly found in all owner policies, and exclude from coverage title defects that do not appear on the public record, such as boundary encroachments, unrecorded mechanics liens and persons in possession of the property. The second set of exceptions are called "special exceptions" because they are unique to the specific land being sold. Banks require that their borrowers pay for a "lender's policy" of title insurance to insure them against certain risks up to the face amount of the loan. Lender policies provide extended coverage beyond that found in owners' policies.

Title Search – An investigation of the public records, in the county where the property is located, to determine whether title is marketable and can be transferred to a buyer free and clear of objectionable liens and encumbrances. In Oregon, such searches are provided by title companies, not lawyers. The results of the search are first disclosed in a "preliminary title report" that is distributed to the parties, the lender and the real estate agents. The standard statewide OREF Sale Agreement form contains a contingency period for buyers to review the preliminary title report and indicate whether they have any objections to the matters disclosed in the report and for sellers to try to cure any title defects.

Title Theory States – *[See, Lien Theory States, above.]*

Townhome – Generally refers to side-by-side multiple residential units sharing a common wall, common roof line, and having two-story construction. Each owner has deeded title to their property which includes the underlying land representing the foundation footprint. It may include a strip in front and/or back of the units. Maintenance of all common areas *[and often any of the owner's land]*, is governed by the CC&Rs *[defined above]*. Some "townhome developments" are actually condominiums *[defined above]*, in which the owners merely own the interior of their units, and the rest of the property consists of either limited and/or general common elements. In either case, there is a "homeowners association" or

"unit owners association" to maintain the common areas and assess dues to pay for the expense.

Transfer Tax – A tax levied at the time of each recorded transfer of real estate within the county. Of Oregon's 36 counties, only Washington County has a transfer tax, which is $1.00 per $1,000 of stated consideration. There are many exceptions to this tax, such as conveyances to clear title, adjust boundary lines, transfers between related companies, etc. In Oregon, it is customary that the buyer and seller equally split the cost of the tax for transfers in Washington County.

Truth-in-Lending Act ("TILA") – A federal law enacted to promote the informed use of consumer credit by requiring disclosures about loan costs and terms. TILA gives consumers the right to cancel certain credit transactions, regulates certain credit card practices, and provides a method for the resolution of credit billing disputes. The Act prohibits certain practices in connection with credit secured by a consumer's principal residence.

Trust Deed - The name of the instrument used by Oregon lenders to secure a borrower's repayment of the loan. The repayment obligation is described in the promissory note that is signed by the borrower. The trust deed, once recorded in the public records, acts as notification to the world that the lender holds a secured position on certain real property for repayment of a debt. The trust deed sets forth the lender's legal rights of foreclosure should the borrower default under the terms of the note. Mortgages and trust deeds serve exactly the same purpose; they differ only in the terminology and the methods of foreclosure. Many people use the term "mortgage" generically to apply to trust deeds as well. *[See, ORS Chapter 86.]*

Trustee - A person who is appointed by a court or designated in a written document, such as a will or trust, to take control of property for the benefit of another. Under Oregon's trust deed law, the trustee is the third party named in the trust deed who is designated to hold the property "in trust" pending the default or payoff of the loan. If the borrower (called the "Trustor" or "Grantor") pays off the loan, the lender (called the "Beneficiary") instructs the Trustee to issue a "Deed of Reconveyance" which is the same as a satisfaction of mortgage, and removes the lien from the borrower's record title. If the borrower defaults in the repayment of the loan, the lender instructs the Trustee to commence the foreclosure process. *[Note: Contrary to how it sounds, the borrower is the true and legal title holder of the property secured by a trust deed. The lender merely has a lien on the property. There is no real "conveyance" of title in the property to the Trustee. The trust deed is essentially the same as a mortgage – that is, they are both documents used by lenders to secure repayment of the promissory note. The major difference between mortgages and trust deeds is in the lender's foreclosure rights. In Oregon, trust deeds are almost exclusively used to secure loans, although mortgage terminology continues to be used, especially among lay people. - PCQ]*

U

Underwater - This is an expression used to refer to a condition that exists when the fair market value of one's real property is less than the current balance of all mortgages and

other liens recorded against it. For example, if two mortgages total $300,000 and the property's present fair market value is $200,000, it is said to be "underwater." *[See "Negative Equity," above.]*

Underwriting - The process of analyzing a prospective borrower's loan application to determine their ability to honor the terms of a loan for a specific amount of money upon certain repayment terms. It includes a review of the applicant's credit history, credit score, employment, net worth, and a determination of the property's market value compared to the amount sought for the loan. The final lending decision is made at underwriting, which does not usually occur until late in the real estate transaction, shortly before funding and closing.

Uniform Commercial Code or "UCC"– A set of laws governing commercial *[as opposed to real estate]* transactions. They are called "uniform" because they were prepared for all states to adopt, and with variances between the states, the have been accepted in all states. They became necessary in order that commercial law could be applied to interstate commerce. The UCC is important in foreclosure law because Articles 3 and 9 govern the transfer of the promissory note between successive lenders.

Up-Front Charges - Bank fees charged to a borrower at the time of closing. This includes points, mortgage broker's fees, pre-paid taxes and insurance premiums, and other charges.

V

VA Mortgage: A mortgage guaranteed by the U.S. Department of Veterans Affairs or the Oregon Department of Veterans Affairs. Note that these loans are not made by the VA, just guaranteed to the owner of the loan. With this guarantee, lenders have been more willing to make loans upon more flexible and easier credit terms than for loans sold to Fannie and Freddie. A VA loan is not a "conventional loan." A conventional loan is one that is made or guaranteed by an agency of the federal government.

W

Walk-Away – A term used to describe a situation where owners abandon their homes due to being significantly "underwater" – meaning that the value of the home is less than the total indebtedness due and there is no reasonable prospect of selling or refinancing in the immediate future. Walk-aways were also the result of some owners' inability to pay their adjustable rate mortgage, which reached a level they could no longer afford.

X

No entries.

Y

Yield Spread Premium ("YSP") - The payment mortgage brokers received from lenders when they sold consumers a loan carrying an interest rate that was higher than what a borrower might otherwise qualify for known as the "spread." The higher the rate, the larger the spread, and the more money the broker could make. Some critics have charged that YSPs were nothing more than a "kickback" by the lender to the mortgage broker for steering consumers – many of whom are already credit challenged – into high-cost loans they could not ultimately afford. Some studies have confirmed that a large percentage of all subprime loans included YSPs paid to the mortgage broker. Although YSPs were disclosed on the HUD-1, they were not clearly described nor pointed out to borrowers, and accordingly were either ignored or misunderstood by many of them. On the other side of the coin, many mortgage brokers argue that some portion of the YSP were applied toward borrowers' loan costs, thus enabling them to obtain a loan with less up-front money. *[However, some might say – in retrospect – that the inability to pay these up-front loan costs was an early indicator that perhaps the borrower should never have been qualified for the loan in the first place. - PCQ]*

Z

No entries.

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