

## GLOSSARY

Many of the terms used in the foreclosure process can be confusing to homeowners. Listed below is a glossary of these terms with a detailed description of the word or phrase.

### Definitions: A

**Abandonment:** A disclaimer of ownership by the trustee or debtor in a property deemed burdensome or inconsequential. Once a property has been abandoned it is no longer the property of the estate, and creditors can seek to recover their money.

**Absolute Title:** A title that is clear, without any liens or judgment.

**Abstract of Judgment:** The summary of a court judgment that creates a lien against a property when filed with the county recorder.

**Adjudication:** A judicial determination.

**Adjustable Rate Mortgage (ARM):** A mortgage in which the interest rate is adjusted periodically based on an index. Also called a variable rate mortgage.

**Affidavit:** A written statement made under oath before an officer of the court or a notary public.

**Agreement of Sale:** A written agreement between seller and buyer in which the buyer agrees to buy the prescribed real estate and the seller agrees to sell upon the terms of the agreement.

**Alt-a Loans:** Mortgage loans in which one or more borrower or loan characteristics are weaker than required for conforming mortgage loans. These loans generally carry an interest rate of about .5 percent higher than conforming loans.

**Alternative Mortgage Instrument (AMI):** Any mortgage other than a fixed interest rate, level payment amortizing loan. Types of AMIs:

- Variable rate mortgages
- Rollover loans
- Adjustable rate mortgages

**Amortization:** A gradual paying off of a debt by periodic installments. The payments are structured so that the borrower pays both interest and principal with each equal payment.

**Appraisal:** The determination of property value based on recent sales information of similar properties.

**Arrearages:** Amount past due on mortgage installments.

**Arrears:** Overdue mortgage payments including interest.

**Assessed Value:** A state or local government's determination of a property's worth for tax purposes.

**Assignment:** The transfer of a mortgage or other asset, contract, or legal right from one party to another.

**Assumable Loan:** A mortgage loan that allows a new home purchaser to undertake the obligation of the loan with no change in loan terms. The buyer usually must meet qualification standards to assume a loan.

**Assumable Mortgage:** A mortgage that provides for a buyer to "assume" all outstanding payments when a home is sold. The buyer usually must meet qualification standards to assume a loan.

**Assumption Clause:** A provision in an assumable mortgage that allows a buyer to assume the responsibility of the mortgage from the homeowner.

**Assumption of Mortgage:** The purchase of mortgage property whereby the buyer accepts liability for the debt that continues to exist. The seller remains liable to the lender unless the lender agrees to release them.

**Attachment:** The seizing by a Sheriff or other authorized person or property belonging to the defendant as security for any judgment the plaintiff may get in a court action.

**Auction:** The public sale of property to the highest bidder.

**Automatic Stay:** A bankruptcy provision that stops any act that can be construed to be an act against the interest of the debtor or the debtor's property.

### **Definitions: B**

**Balloon Mortgage:** Behaves like a fixed-rate mortgage for a set number of years (usually five or seven) and then must be paid off in full in a single "balloon" payment. Balloon loans are popular with those expecting to sell or refinance their property within a definite period of time.

**Balloon Payment:** The final lump sum that is paid at the end of the balloon mortgage.

**Bankruptcy:** A tactic that individuals use to relieve themselves of debts and/or liabilities when they are no longer able to repay. The most common form of individual bankruptcy is a Chapter 7, when an individual frees himself from most of his/her debts. Borrowers who have undergone bankruptcy usually cannot qualify for "A" paper loan for a period of two years after the bankruptcy has been discharged and requires the re-establishment of credit.

**Bargain Sale:** The sale of a piece of property for less than market value.

**Bilateral Contract:** A contract in which the parties involved give mutual promises. Also called "reciprocal" contracts.

**Bill of Sale:** A written document that transfers a title to personal property.

**Binder:** 1) An agreement accompanied by a deposit, for the purchase of real estate, to evidence good faith on the part of the purchaser or 2) A preliminary report regarding the condition of a title and a commitment to issue a title insurance policy in a pre-determined manner when conditions are met.

**Blanket Mortgage:** A single mortgage that covers more than one parcel of real estate.

**Bond:** An agreement that insures one party against loss by acts or defaults of another party.

**Breach:** To break or violate an agreement.

**Breach of Contract:** A violation of the terms of a legal agreement; default. Breach of contract allows the non-breaching party to rescind the contract, sue for damages, or sue for performance of the contract.

**Breach of Warranty:** The sellers' inability to pass clear title of a property to a buyer.

#### **Definitions: C**

**Call Option:** A clause in a mortgage that gives the lender the right to request the balance at any time.

**Cancellation Clause:** A clause that details the condition under which each party may terminate the agreement.

**Caps:** The top limit on the amount the interest rate or monthly payment can increase during a single time period of an Adjustable Rate Mortgage. Every ARM has two caps: a periodic cap, which limits the periodic changes to the interest allowed in the loan

agreement, and a lifetime cap, which governs the total increase that can be imposed during the life of the loan.

**Carry-Back-Loan:** A loan in which a seller agrees to finance a buyer in order to complete a property sale. A carry-back-loan contains a promissory note placed within the loan. The promissory note is a contract that details the terms of a commitment from the buyer to pay the seller for a property. The terms of the note or contract contains the purchase price, the interest rate, and the date that the loan must be paid in full.

**Cashier's Check:** A check drawn on the issuing bank's funds, signed by a cashier or bank officer, and guaranteed payable. A cashier's check is used to guarantee funds are available. A fee is usually charged for the check.

**Cash-Out Refinance:** Refinancing of a mortgage in which the new loan is larger than the outstanding balance of the old loan. As a result, the borrower receives additional cash excess of closing costs. The money received from the cash-out refinance can be used for anything.

**Circuit Court:**

A state court that holds sessions at several different locations within a judicial district in which most judicial foreclosures are filed and adjudicated.

**Clear Title:** A title that is free of liens or any legal question as to the ownership of the property.

**Collateral:** Property, real or personal, pledged as a security to back up a promise. In a home loan, the property is considered collateral that can be revoked if loan is not repaid according to the terms of the mortgage or deed of trust.

**Collateral Security:** A separate obligation attached to a contract to guarantee its performance; the transfer of a property or of other valuables to ensure the performance of a principal agreement.

**Collection:** The series of steps a lender takes to bring a delinquent mortgage up to date.

**Commitment:** A written letter of agreement detailing the terms and conditions by which the lender agrees to lend money to the borrower.

**Commitment Period:** The length of time that the lenders loan commitment is valid. The borrower must accept the commitment before the time allotted expires.

**Confession of Judgment:** A written agreement in which the borrower admits liability and accepts the amount of agreed-upon damages that they must pay to the lender in the

event of a default of an underlying loan obligation, including the note that may be secured by a mortgage, and agrees that the statement may be filed as a court judgment against them if they do not pay or perform as agreed. This avoids further legal proceedings and may prevent a legal judgment being filed if the borrower fulfills all of the terms.

**Conforming Mortgage:** Mortgage loans that meet Fannie Mae (FNMA) or Freddie Macs (FHLMC) criteria for guarantee as “standard” or “regular” mortgage loans at attractive rates and terms and conditions.

**Consent Foreclosure:** Forecloses the interests of the mortgagor and any other lien claimant. The party being foreclosed upon agrees not to contest the proceeding or the eventual sale of the property involved.

**Consent Judgment:** A judgment issued by a judge based on an agreement between parties of a lawsuit to settle the matter. It is aimed at ending the lawsuit with a judgment that is enforceable.

**Conventional Financing:** A mortgage that is not insured or guaranteed by a government agency.

**Conventional Mortgage:** Refers to a fixed-rate, 30-year mortgage that is not insured by a government agency and meets conventional underwriting standards.

**Conversion Clause:** A clause in some adjustable-rate loan agreements allowing the loan to be changed to a fixed-interest rate loan at a specified time.

**Convertible ARM:** An adjustable-rate mortgage that can be changed into a fixed-rate mortgage at a specified time.

**Conveyance:** A written document, which transfers real property or real property interests from one party to another. This document must be accepted before a notary public and recorded with the county recorder.

**Conveyance Tax:** A tax imposed on the transfer of real property.

**Covenants:** Rules and restrictions governing the use of property.

**Creative Financing:** A new or unusual way of structuring a home loan so that a buyer can buy the house.

**Credit Loan:** A credit loan is a mortgage that is issued on only the financial strength of a borrower, without great regard for collateral.

**Credit Rating:** Borrowers are rated by lenders according to their credit-worthiness or risk profile. Credit ratings are expressed as letter grades such as A-, B, or C+. These ratings are based on various factors such as a borrower's payment history, foreclosures, bankruptcies and charge-offs. There is no exact science to rating a borrower's credit, and different lenders may assign different grades to the same borrower.

**Credit Report:** A report to a prospective lender on the credit standing of a prospective borrower. Used to help determine creditworthiness. Information regarding late payments, defaults, or bankruptcies will appear here.

**Creditor:** An entity or individual to whom money is owed.

**Credit-Related Expenses:** The sum of foreclosed property expenses plus the provision for losses.

**Credit-Related Losses:** The sum of foreclosed property expenses plus charge-offs.  
Cure the Default  
Reinstate or payoff the loan.

## **Definitions: D**

**Date-Down:** An extension to the title search that is commissioned during the foreclosure process by a trustee's sale guaranty. A date down is commissioned to make sure all lien holders receive notification of the foreclosure action.

**Debt:** Amount of money one person or entity owes to another person or entity.

**Debt-to-Income Ratio:** The percentage of before-tax monthly earnings that goes towards paying off loans or other obligations. Debt-to-income ratio is used by lenders to evaluate a borrower's ability to pay mortgage payments.

**Decree of Foreclosure:** A court order to set out the outstanding amount on a delinquent mortgage in order to sell the property to pay the lending institution.

**Deed:** A legal document, which transfers title or an interest in real property from the seller to the buyer. The deed must describe the property, name the individual or entity transferring the property (grantor), the individual or entity receiving the property (grantee) and be signed by the grantor, who must acknowledge before a notary public that they have executed the deed. To complete the transaction the deed must be recorded at the office of the County Recorder or Recorder of Deeds.

**Deed in Lieu of Foreclosure:** Used by owners to voluntarily convey the title of their property to the mortgagee/beneficiary (lender) to avoid the negative credit consequences of a foreclosure. The title must be free and clear of any other encumbrances and the owners execute an affidavit acknowledging that they are acting voluntarily, with informed consent.

**Deed of Re-Conveyance:** A document that releases a deed of trust, when the mortgage has been paid in full.

**Deed of Trust:** Used in title theory States. A deed of trust is a three party security instrument through which real property is given as security for a debt. The three parties involved are the borrower, the trustee, and the lender. In the transaction, the borrower transfers the legal title of the property to the trustee, who holds the property in trust as security for the payment of the debt to the lender. After the borrower has met all of their obligations the third party must return the title back to them. If the borrower becomes delinquent on the loan, the lender can instruct the trustee to file a notice of default in the county in which the property is located. The deed of trust contains the power-of sale provision that authorizes the lender to sell the borrower's property through a trustee rather than a judge. If the borrower defaults on their payments the trustee, at the lender's request, will begin the foreclosure proceedings. If the loan is not cured or the borrower has failed to make any arrangements with the bank – during a set period of time, determined by State law - the trustee may sell the property at a public auction sale.

**Default:** The failure to make payments on a loan.

**Default Judgment:** A judgment against a defendant who failed to make an appearance in court.

**Deficiency Judgment:** A judgment entered against the borrower for the amount remaining due when a property is sold at a foreclosure auction sale for less than the remaining balance on the loan.

**Delinquency:** Late or non-payments of principal, interest, taxes, or insurance.

**Demand Letter:** Notice to the borrower, sent by the lender or trustee, that she is in default and that the loan must be cured or foreclosure proceedings will begin.

**Distressed Property:** A property in poor condition, or whose owner is in poor financial condition.

**Document Needs List:** An inventory of papers a lender needs to underwrite a loan. This inventory usually includes; pay stubs, bank statements, and tax returns.

**Due-On-Sale Provision:** A provision in a mortgage that allows a lending institution to demand repayment in full if the borrower sells the property that serves as security for the mortgage.

**Dutch Auction:** The auction sale price is gradually lowered until a purchase occurs.

### **Definitions: E**

**Effective Gross Income:** Additional income that a lending institution considers when assessing a loan application of a potential borrower.

**Encumbrance:** Any lien against a property or any restriction in its use, such as an easement; a right or interest in a property held by one who is not the legal owner.

**Endorsement:** Guaranteeing a loan in the event that a borrower defaults on a loan.

**Endorser:** A person who signs over ownership of a property to another person.

**Equity:** The difference between the current market value of a property and the principal balance of all outstanding loans.

**Equity Line of Credit:** A homeowner borrows money as needed, up to a pre-negotiated limit. Interest is paid only on the amount of the loan used and the borrower can pay off the balance at-their-own-pace.

**Escalator Clause:** A clause in a loan providing for increases in payments or interest based on pre-determined schedules or on a specific economic index, such as the consumer price index.

**Escrow:** A third party agent that receives, holds, and/or disburses certain funds or documents upon the performance of certain conditions. For example, an earnest money deposit is put into escrow until the transaction is closed. Only then can the seller receive the deposit.

**Escrow Company:** A third-party that holds the documents and money in a real estate transfer until all conditions are met.

**Escrow Fee:** These costs cover the preparation and transmission of all home purchase related documents and funds. Escrow fees range from several hundred to over a thousand dollars, based on the purchase price of your home. Not all states require funds to be put into escrow accounts for closing.

**Exotic Mortgage:** A term that is used to describe non-traditional mortgages. These mortgages allow more homeowners to be able to afford homes priced above their means. These loans are risky for the borrower and the lending institution.

### **Definitions: F**

**401(k)/403(b) Loan:** A loan that can be taken against the amount accumulated in the 401(k)/403(b) plans, if so allowed by the plan administrator. Loans against these plans are an acceptable source of down payment for most types of other loans.

**Fair Market Value:** The price established in a free market between a buyer and a seller in an arms length transaction where neither one is forced to buy or sell. Fair market value in real estate is established by comparing the prices of similar properties sold close to the proximity where your property is located.

**FHA Loan:** Mortgages that are insured by the Federal Housing Administration and made by approved private lenders to qualified borrowers, in accordance with its regulations. The down payment on an FHA loan is usually less than that of a conventional mortgage. The FHA does not lend money, but it does nominate approved lenders.

**Fiduciary:** A person who is entrusted with a property; a trustee who holds, controls or manages for another.

**Finance Charge:** The total dollar amount your loan will cost you. It includes all interest payments for the life of the loan, any interest paid at closing, your origination fee and any other charges paid to the lender and/or broker. Appraisal, credit report and title search fees are not included in the finance charge calculation.

**First Mortgage:** A mortgage that has priority over other mortgages.

**Fixed-Rate Mortgage:** A Fixed Rate Mortgage offers an interest rate that will never change over the life of the loan, regardless of any interest rate fluctuations in the future. As a result, monthly payments on the principle and interest throughout the life of the loan, whether 30, 20, or 15 years, are also fixed for the life of the loan. With a FRM mortgage the borrower will have a predictable monthly house payment for as long as they have the loan. The term of your FRM can be 30, 20, or 15 years.

**Forbearance:** An agreement not to initiate the foreclosure process against a delinquent borrower provided the borrower complies with an alternate repayment plan.

**Forbearance Agreement:** A formal agreement between a borrower and a lender to postpone an ongoing foreclosure.

**Foreclosure:** Used to describe the process in which legal action is taken by a lender when the terms of the mortgage or trust deed are not met and the borrower is in default. A borrower is in default when the repayment terms stipulated in the trust deed or mortgage are not fulfilled. When the borrower defaults the loan becomes a non-performing asset and is no longer earning interest for the lending company. If the loan is no longer earning interest then it is not producing income for the lender. In order to recoup its losses the bank starts the foreclosure process. State foreclosure law dictates the path the foreclosure process takes. If the borrower is unable to cure the loan before the end of the foreclosure process, the property is sold at auction. Proceeds from the auction sale are applied to the defaulted mortgage debt.

**Foreclosure Auction Sale:** A public auction sale of a property held to recover the debt owed from a defaulted loan. The manner in which the auction sale is officiated is subject to State foreclosure laws.

**Forfeiture:** The loss of property because of a violation of law or contract.

**Fully Amortized (ARM):** A mortgage that amortizes, or pays down, the balance of a loan.

### **Definitions: G**

**Garnishment:** The entire process of petitioning and getting a court order to take money from a persons' salary for payment of a debt. State law sets the amount that can be taken. In most states a judgment is necessary before money can be taken.

**General Lien:** A lien such as a tax lien or judgment lien that is attached to all property of the debtor.

**General Warranty Deed:** A lien against an individual. This lien will attach to any real property the individual owns or comes to own, once the lien is recorded and becomes part of the public record.

**Government Mortgage:** A type of mortgage insured by the FHA (Federal Housing Authority), VA (Veteran's Administration), or RHS (Rural Housing Authority).

**Grace Period:** A time allowed, usually 15 days, for making late payments without a penalty.

**Graduated-Payment Mortgage:** A home loan that starts out with low payments that gradually increase at a pre-determined rate over the first few years of the loan, and then remains fixed for the remainder of the loan.

**Grant Deed:** A deed used in several States to transfer title from one party (grantor) to another (grantee). The deed must describe the property by legal description of the boundaries and/or parcel numbers, be signed by all of the people transferring the property, and be witnessed and signed before a notary public. The transfer is finalized by recording the deed with the County recorder or Recorder of deeds.

**Guaranteed Mortgage:** A home loan guaranteed by a government agency or other third-party.

**Guaranty:** A collateral agreement to pledge or agree to be responsible for another person's debt. In foreclosure proceedings the guaranty can be used as a basis for obtaining a deficiency judgment.

### **Definitions: H**

**Hard-Money Lender:** An institution or private investor who makes high-interest loans to borrowers who are unable to borrow money through more traditional sources.

**Hard-Money Loan:** Cash loan to a borrower.

**Home Equity:** The part of a home's value that the homeowner owns outright. It is the difference between the fair market value of the home and the principal balance of all of the mortgage loans.

**Home Equity Conversion Mortgage (HECM):** Also known as the reverse annuity mortgage. This mortgage provides that instead of making payments to a lender, the lender makes payments to the individual. Older homeowners are able to convert home equity into cash this way, in the form of monthly payments. Borrowers don't qualify on the basis of income, but on the value of his or her home. Such a loan does not have to be repaid until the borrower no longer occupies the property.

**Home Equity Line of Credit:** A mortgage loan in second position that allows a borrower to obtain cash drawn against home equity, up to a certain amount.

**Home Equity Loan:** A loan that allows homeowners to borrow against the equity in their homes.

**Hybrid Financing:** The joining together of two forms of finance, such as combining a convertible loan with a participation loan, under which the lender has the right at loan maturity to convert the debt to a 50 percent ownership in the property.

**Hypothecate:** To pledge something as security without having to give up possession of it. Through a mortgage or deed of trust, the borrower hypothecates his/her new home to the lender or trustee and still retains control the home.

### **Definitions: I**

**Initial Interest-Rate:** The starting interest-rate a borrower pays, to a lender, for the use of borrowed money on an adjustable-rate mortgage.

**Injunction:** A court decision intended to prevent harm. In judicial foreclosure an injunction is used to postpone an ongoing foreclosure action so that a judge can determine that the proceedings are just and proper.

**Installment:** The regular monthly payment that a borrower agrees to make to a lender to payoff a loan or outstanding debt.

**Installment Contract:** A purchase agreement in which the buyer makes a series of payments and does not receive title to the property unit all of the installments are paid.

**Instrument:** A written legal document such as a deed, trust deed, lease, re-conveyance or a contract.

**Insurable Title:** Title to real property that a title insurance company agrees to insure against defects and disputes.

**Insured Mortgage:** A mortgage protect by mortgage insurance through the by the Federal Housing Administration or by private mortgage insurance. If the loan is defaulted, the insurer is required to pay the lender the lesser of the loss incurred or the insured amount.

**Intent to Sell:** A notice made by a lender or other secured party as part of the initiation of foreclosure proceedings of the intent to sell the secured property at a public or private sale at the conclusion of foreclosure proceedings.

**Interest:** 1) The fee charged by a lender for the use of borrowed money, usually a percentage of the amount borrowed; 2) The profit in goods or money that is made on invested capital; 3) A legal right to claim a share in real property.

**Interest Accrual-Rate:** The rate at which interest accrues on a mortgage.

**Interest Only Loan:** A term loan arrangement calling for payments of interest only, not to include any amount for principal.

**Interest-Rate:** Is the yearly price charged by a lender for the use of borrowed money. This is usually expressed as a percentage of the total amount loaned. It is calculated by dividing the amount of interest by the amount of principal. Interest rates change as a result of inflation and Federal Reserve policies.

**Interest-Rate Buy-Down Plan:** In order to sell their home quickly some sellers are willing to advance funds from the sale of the home to buy down the interest rate and reduce the buyer's monthly obligation.

**Interest-Rate Cap:** A limit on how much a borrowers interest-rate can increase at rate adjustment periods and over the life of the loan.

**Interest-Rate Ceiling:** The highest interest a lender can charge for an adjustable-rate mortgage.

**Interest-Rate Swap:** A transaction between two parties, in which each agrees to exchange payments tied to different interest rates or indices for a specified period of time.

**Intermediate-Term Mortgage:** A mortgage loan with a stated maturity at the time of purchase that it is equal to or less than 20 years.

## Definitions: J

**Judgment:** The final decision by a court in a lawsuit. In foreclosure cases it is a decree stating that an individual owes money to the lender. A lien may be placed against the debtor's real property as collateral for the judgments creditor.

**Judgment Lien:** The claim upon the property of a debtor resulting from a judgment. The lien will bind the debtor's real property once an abstract of judgment is recorded.

**Judicial Foreclosure:** A foreclosure that is filed as a formal lawsuit in a state court. The procedure involves filling a complaint, sending per notice to the interested parties, entry of a judgment, sale of the property at an auction sale, and confirmation of the sale by the court. In Wisconsin, no sale can occur for one year from the date the judgment is entered unless the lender waives the right to a deficiency. If they do, the delay is only six (6) months or two (2) months if the property is abandoned. Sales by the consent of the borrower may occur earlier.

**Jumbo Loan:** A loan that exceeds the maximum underwriting limits set by Fannie Mae and Freddie Mac. Because jumbo loans cannot be funded by these two agencies, they

usually carry a higher interest rate. Jumbo loans must be maintained in the lenders portfolio or sold to private investors.

**Junior Lien:** A lien whose claim against the property will be satisfied only after prior liens have been repaid.

**Jurisdiction:** A geographic or topical area of authority for a specific government entity.

### **Definitions: L**

**Late Charge:** A penalty for failure to pay an installment on time.

**Legal Blemish:** A problem with a property, such as a lien on the title.

**Lender:** The bank, mortgage company, or mortgage broker that offers home loans. Many institutions only "originate" loans and then resell the obligation to third parties.

**Liabilities:** A borrower's debts and financial obligations.

**Liability Insurance:** Insurance that protects property owners against any claims of negligence, inappropriate action that resulted in bodily injury, or property damage to another party.

**Lien:** A legal claim against property for payment of a debt or for services rendered. The person or entity who holds a lien has the legal right to sell the property to obtain money or recover money when the property is sold.

**Lien Theory:** Is a legal concept where a property acts as the security for a loan transaction. The lending institution, in the name of the borrower, holds the title of the property until the property is paid off and the lien can be released.

**Life of Loan Cap:** The maximum interest rate that can be charged during the life of the loan. Also called Lifetime Cap. This value is often expressed as an increment above the initial loan rate. For example, an adjustable rate loan with an initial rate of 7.25% and a 6% lifetime cap will never adjust above a rate of 13.25% (7.25+6.0).

**Liquidated Damages:** An amount specified in a purchase agreement that one party must pay the other if the contract is breached.

**Lis Pendens:** A pending lawsuit. It is a written notice that a lawsuit has been filed which concerns the title to real property. Lis pendens is filed with the clerk of the court, certified that it has been filed, and is then recorded at the County Recorders office.

**Loan:** The principal, or amount of total borrowed money, that is repaid with interest.

**Loan Officer:** An intermediary between lending institutions and borrowers, loan officers solicit loans, represent creditors to borrowers, and represent borrowers to creditors.

**Loan Servicing:** A service performed by a lender to protect a mortgage investment, including collecting monthly payments from borrowers and dealing with delinquencies.

**Loan Term:** The length of time written in the terms of a loan, by the lender and the borrower, to pay off a mortgage.

**Loan-to-Value Ratio:** The relationship between the amount of the mortgage loan and the appraised value of the property expressed as a percentage. A LTV ratio of 90 means that a borrower is borrowing 90% of the value of the property and paying 10% as a down payment. For purchases, the value of the property is assumed to be the purchase price, for refinances the value is determined by an appraisal.

**Loss Mitigation Department:** A department that attempts to help a borrower avoid foreclosure. The lender tries to help a borrower who has been unable to make their loan payments and is in danger of defaulting on their loan.

**Low-Documentation Loan:** Low-doc or no-documentation mortgage applicants have to have excellent credit histories but their income and assets are not verified. Low-documentation loans are designed for the entrepreneur or the self-employed. A substantial down payment is needed and a higher interest rate will be charged.

**Low-Down Payment Loan:** A mortgage or loan in which the buyer puts down a small down payment and borrows a very high percentage of the purchase price.

### **Definitions: M**

**Maturity:** The date the loan is due and payable in full.

**Mechanic's Lien:** A legal claim against a property to secure payment for the price or value of work performed and material furnished in construction or repair on a property.

**Minimum Payment Option Mortgage:** A mortgage where the borrower can choose to pay a low monthly payment. The payment, in most cases, will be insufficient to pay the interest due and will result in a higher loan balance the following month.

**Mortgage:** A legal document that pledges property to a creditor for the repayment of the loan, and is the term used to describe the loan itself. Some states use the term First Trust Deeds to refer to mortgage loans.

**Mortgage Acceleration Clause:** A provision in a loan agreement that lets a lender demand payment of the full balance under specified circumstances, such as sale of the property, default or refinancing.

**Mortgage Banker:** A financial intermediary that originates or funds loans, collects payments, inspects the property, and forecloses if necessary. The main difference between a mortgage banker and a loan officer is a banker funds their own loans and sell them on the secondary market.

**Mortgage Broker:** A person finds lenders for prospective borrowers who meet the lenders' criteria, joining the borrower and lender for a real estate loan. A mortgage broker earns a placement fee.

**Mortgage Constant:** The factor used for rapid computation of the annual payment needed to amortize a loan.

**Mortgage Insurance (MI):** Insurance that covers the lender against losses incurred as a result of a default on a home loan. This is usually required on all loans that have a loan-to-value higher than eighty percent. Mortgages that have an 80% LTV that do not require mortgage insurance have higher interest rates. The lenders then pay the mortgage insurance themselves. Private mortgage insurance (PMI) is required for all conventional loans with less than a 20% down payment. In addition, FHA loans and some first-time homebuyer programs require mortgage insurance regardless of the loan-to-value.

**Mortgage Modification:** A loss mitigation option that allows a borrower to refinance and/or extend the term of the mortgage loan.

**Mortgage Note:** A written promise to repay funds advanced by the mortgage lender on the agreed upon terms.

**Mortgage Refinance:** An old loan paid off with a new loan. Individuals who refinance a mortgage are generally doing so to get lower interest rates, lower their payments, or to take cash out of their equity.

**Multi-Family Mortgage:** A loan to buy an apartment building using the property as collateral.

**Definitions: N**

**Negative Amortization:** Occurs when a borrower is paying less interest than what is being charged for the mortgage loan. The unpaid interest is added to the loan's principal. The borrower ends up owing more than the original amount of the mortgage loan.

**No-Cost Loan:** A no-cost loan can either be: 1) A loan that has no "lender costs" associated with it or 2) A loan that also covers purchases or refinancing costs, which may be incurred in buying a home, obtaining and/or refinancing a loan, but are not directly charged by the lender. The interest rate on this type of loan is higher.

**No-Documentation Loan:** A mortgage in which an applicant provides a minimum of information. The underwriter bases his/her decision on the applicant's credit history, the appraised value of the house, and down payment amount.

**Non-Assumption Clause:** A loan provision that strictly prohibits the transfer of a mortgage to another borrower without the lender's permission.

**Non-Conforming Loan:** A loan that does not conform to Fannie Mae or Freddie Mac guidelines because the loan amount is too high or the underwriting or other criteria are not met.

**Non-Dischargeable Debt:** A debt that cannot be eliminated in bankruptcy.

**Non-Judicial Foreclosure:** Does not involve a court action. This foreclosure process occurs in the presence of a third-party trustee as set forth in the deed of trust. Non-judicial foreclosure is practiced in title theory states, or those that use a deed of trust to secure a lien against real property rather than a mortgage. In title theory states the deed is placed in trust with a third party until all obligations contained in the promissory note have been satisfied. After the borrower has met all of their obligations the third party must return the title back to them. If the borrower becomes delinquent on the loan, the lender can instruct the trustee to file a notice of default in the county in which the property is located. The deed of trust contains the power-of sale provision that authorizes the lender to sell the borrower's property through a trustee rather than a judge.

**Note:** A legal document that obligates a borrower to repay a mortgage loan at a stated interest rate during a specified period of time.

**Note Rate:** The stated interest rate on a mortgage note.

**Notice of Default (NOD):** A publicly recorded formal written notice to a borrower, with a property used as security under a mortgage or deed of trust, that he/she is

delinquent on her/his payments. If the delinquency and the costs of preparing the legal papers for the default are not paid within a specified time, foreclosure proceedings may move forward.

**Notice of Foreclosure Sale:** Also known as Notice of Sale. Used in Judicial Foreclosure it is the final judgment of foreclosure. It is a public notice announcing the sale of a property to recover a debt from a defaulted mortgage. The notice indicates the time, date, description of the property, and the location of the sale. The Notice of Foreclosure Sale is mailed to all of the parties involved in the foreclosure action, advertised in the local papers, and recorded in public records.

**Notice of Intent to Cure:** Notifies the lender, trustee or any other party involved in the foreclosure process of the intent of the borrower to cure a pending default or bring a defaulted loan current. In some areas this notice is required to reinstate the loan.

**Notice of Intent to Foreclose:** An alternate term for Notice of Default used in title theory states to notify borrowers that they are delinquent on their payments. If the delinquency and the costs of preparing the legal papers for the default are not paid within a specified time, foreclosure proceedings may move forward.

**Notice of Intent to Redeem:** Notifies the lender, trustee or any other party involved in the foreclosure auction sale that the borrower, who has been foreclosed upon, intends to exercise their right of redemption and reclaim the foreclosed property. In order to reclaim the property the borrower has to pay the loan in full and any other costs incurred during the foreclosure process.

**Notice of Sale:** Also known as Notice of Foreclosure Sale. Generally used in Judicial Foreclosure it is the final judgment of foreclosure and announces the public sale of a property to recover a debt owed by the owner of the property. The Notice of Sale specifies the time, date, description of the property, gives an estimate of the unpaid debt, and the location of the sale. It is mailed to all of the parties involved in the foreclosure action, advertised in the local papers, displayed in public view at the county courthouse, and recorded in public records.

**Notice of Trustee:** A written document used in the Non-Judicial Foreclosure process that contains the name and contact information of the trustee in a foreclosure.

**Notice of Trustee Sale (NTS):** The final phase in the Non-Judicial Foreclosure process. It announces the public sale of a property to recover a debt owed by the owner of the property. The Notice of Trustee Sale gives an estimate of the unpaid debt, describes the property and specifies the time, date, and location of the auction sale. It is mailed to all of the parties involved in the foreclosure action, advertised in the local papers, recorded in public records, and displayed in public view at the county courthouse.

## **Definitions: O**

**Off Calendar:** A foreclosure that has been removed from the trustee's sale calendar. A new Notice of Trustee's Sale notice will have to be filed in order to set a new sale date.

## **Definitions: P**

**Package Mortgage:** A mortgage that /includes equipment and appliances located on the premises in addition to the real property itself.

**Partial Claim:** A loss mitigation option offered by the FHA that allows a borrower, with the help of a lender, to get an interest free loan from HUD to bring their mortgage payments up to date.

**Partial Entitlement:** Under VA loans, the amount of guarantee still available to an eligible veteran who has used his previous entitlement.

**Partial Payment:** A payment that is not sufficient enough to cover the month payment. During times of economic hardship, a borrower can ask the loan servicing collection department that a partial payment be accepted as a monthly payment.

**Participation Financing:** A loan in which more than one mortgagee or more than one mortgagor harbors an interest. It can also be a loan in which the mortgagee receives partial ownership of the property being financed.

**Payment Change Date:** The date when a new monthly payment amount takes effect on an adjustable rate mortgage (ARM) or a graduated payment mortgage (GPM). The payment change date occurs the month immediately after the interest rate adjustment date.

**Periodic Payment Cap:** The limit on the amount that payments can increase or decrease during any one adjustment period for an adjustable-rate mortgage (ARM) where the interest rate and principal fluctuate independently of one another.

**Petition:** A formal, written request to an authority that something needs be done or some action needs to be taken.

**Petition for Foreclosure:** The lenders application to the court to initiate foreclosure proceedings. This document is filed with the local county courthouse and names all of the parties that have an interest in the defaulted property.

**Piti Reserves:** A cash amount that a borrower must have on hand after making a down payment and paying all closing costs for the purchase of a home. The PITI (principal, interest, taxes, and insurance) must equal the amount that the borrower would have to pay for PITI for a determined number of months.

**Pledge Account Mortgage (PAM):** Combines GPM (graduated payment mortgage) with a subsidizing savings account to provide the borrower with a low payment plan, the lender with amortizing payments and the seller with cash.

**Postponement:** An announcement that reschedules a foreclosure auction sale.

**Power of Sale:** A clause found in mortgages and deeds of trust that gives the trustee the right to sell the mortgaged property at a public auction to satisfy a debt.

**Pre-Foreclosure:** A pre-foreclosure is the period before the foreclosure auction when the borrower is more than 90 days delinquent on their mortgage payment and a notice of default has been recorded. The main purpose for this phase of foreclosure is to give the borrower time to sell their property or to pay back their loan to the lender. This is often the first phase that an investor or homebuyer has an opportunity to negotiate with the homeowner or lending institution to purchase the property.

**Pre-Foreclosure Sale:** A procedure in which the borrower is allowed to sell his or her property to satisfy the loan and avoid foreclosure.

**Prime Rate:** Interest charged by financial institutions to top-rate borrowers.

**Principal:** The amount of debt, not counting interest, left on a loan.

**Principal, Interest, Taxes, Insurance (PITI):** The four components of a monthly mortgage payment.

**Priority Clause:** A clause in a subordinate lien that states that it is subject to a prior lien.

**Private Mortgage Insurance (PMI):** Paid by a borrower to protect the lender in case of default. PMI is typically charged to the borrower when the Loan-to-Value Ratio is greater than 80%.

**Probate:** The process of establishing the validity of a will before an officer of the court. Once validity is confirmed, the probate court will then administer the sale of the property as directed by the will or as authorized by the court to settle any financial obligations.

**Probate Sale:** The sale of property after the death of an owner. It is supervised by the court and the proceeds are divided among the creditors and heirs.

**Public Auction:** An auction sale of a foreclosed property that is announced to the general public in newspapers, posted on the property that is being auctioned, and at the county courthouse.

### **Definitions: Q**

**Quiet Title Suit:** A lawsuit filed to ascertain the legal rights of an owner to a certain parcel of property.

**Quitclaim Deed:** A deed that transfers, without warranty, whatever interest or title a grantor may have at the time the conveyance is made.

### **Definitions: R**

**Recast:** To redesign an existing loan balance into a new loan for the same period or longer, to reduce payments and help a distressed borrower.

**Re-Conveyance Clause:** The clause in a trust deed that gives the title back to the borrower when the loan is paid in full.

**Redemption Period:** Occurs after the auction sale. It is the period during which a former owner can reclaim a foreclosed property after paying all defaulted sums, costs, and fees.

**Refinancing:** The process of paying off one loan with the proceeds from a new loan, using the same property as security.

**Reinstate:** Paying enough money to cure all amounts past due including fees and costs incurred on a defaulted loan.

**Reinstatement:** Occurs in the pre-foreclosure phase. It is the period after foreclosure begins when a borrower can still avoid losing his/her home by paying the overdue balance and other fees incurred.

**Release:** To relieve from debt or security or to abandon a right.

**Release Fees:** A fee charged by a lien holder to release a secured property from a lien.

**Remaining Balance:** Unpaid principal on a loan.

**Remaining Term:** The amount of time it will take to pay off the rest of an installment loan as scheduled.

**Repayment Plan:** An agreement between a lender and a delinquent borrower regarding mortgage payments, in which the borrower agrees to make additional payments to pay down past due amounts while still making scheduled payments.

**Repossession:** Taking back property from a borrower after they have defaulted on a loan.

**Rescission:** Cancellation of a contract by agreement of the parties involved.

**Reserves:** Money set aside to cover recurring expenses such as property repairs and improvements.

**Reverse Annuity Mortgage (RAM):** A system developed for an elderly property owner in which regular monthly payments can be received from a lender. When the total reaches a pre-determined amount, the owner begins repaying the loan or sells the property.

**Reverse Mortgage:** A loan that allows a homeowner to convert built-up equity into cash. The loan is due when the owner dies, sells the house, or moves out.

**Right of Redemption:** The borrower's right to reacquire title to a property in a judicial foreclosure within a year, depending on the state, of the judgment.

### **Definitions: S**

**Sale-Leaseback:** A financing arrangement whereby a buyer leases the purchased property back to the seller for a specified period of time.

**Satisfaction of Mortgage:** A document that is issued by a lending institution when the mortgage is paid in full.

**Scire Facias:** A judicial writ that requires a defendant to appear in court to prove why an existing judgment should not be executed against her/him. It is brought in a case that has already been before a court and commands the person that it is being brought against to appear before the court and show why the judgment brought against them should not stand. In some states this writ is used in foreclosure proceedings. It requires the defaulting borrower to prove that the loan is not in default as opposed to the defaulting lender being required to prove that the loan is in default.

**Second Mortgage:** A mortgage using a home's equity as collateral and has a lien position subordinate to the first mortgage.

**Secondary Financing:** A loan that is secured by a mortgage or a trust deed that has a lien that is junior to another mortgage or trust deed.

**Secondary Mortgage Market:** A market of packaged home loans that are resold as securities to investors. Major players are Fannie Mae and Freddie Mac. By selling loans in the secondary market, lenders obtain the funds needed to distribute new loans.

**Secured Loan:** A loan that is backed by collateral.

**Security Agreement:** A document of a section of a note between a lender and borrower that states that the lender can repossess the property used as collateral if the borrower defaults on the loan.

**Security Deed:** Transfers legal title to the lender for the term of the mortgage or loan. If the borrower defaults a security deed provides the lender and opportunity to foreclose or seize a property without having to take the borrower to court. A security deed is used in non-judicial foreclosures.

**Security Instrument:** The mortgage or trust deed that is the evidence of the pledge of real estate as security, as distinguished from the note or other credit instrument.

**Self-Amortizing Mortgage:** A loan that will retire itself through regular principle and interest payments.

**Seller Carry-Back:** An agreement in which the owner of a property provides financing for a home purchase. Used often in combination with an assumable mortgage.

**Seller Financing:** The seller allows the borrower to use a portion of the equity in the property to finance the purchase.

**Senior Loan:** A real estate loan in first priority position.

**Servicer:** A third party organization that collects mortgage payments and manages borrowers' escrow accounts. These organizations generally service mortgages that have been purchased by an investor in the secondary mortgage market.

**Servicing:** The collection of mortgage payments from borrowers and related responsibilities of a loan servicer.

**Short Sale:** A short sale is a sale of a property in which the sale price is less than what the owner still owes on the mortgage. It is a procedure that is sometimes agreed to by lenders, who would rather take a small loss than go through costly and lengthy foreclosure process.

**Simple Assumption:** A loan assumption in which the original borrower remains secondarily liable should the individual who assumed the loan defaults on the loan.

**Simultaneous Priority:** Two or more liens recorded one right after the other in the same transaction, against the same property, are of equal parity unless there's a written indication on one of them as to their respective priorities.

**Special Forbearance:** A loss mitigation option where the lender arranges a revised repayment plan for the borrower that may include a temporary reduction or suspension of monthly loan payments

**Statutory Lien:** An involuntary lien. It includes tax liens, judgment liens, and mechanic liens.

**Statutory Redemption:** The right of a borrower to regain property that was foreclosed, according to written law.

**Step-Rate-Mortgage:** A fixed-rate home loan on which payments are lower at the beginning, typically for two years, and which then rise.

**Stop Date:** Date on a term loan when the balloon payment is due.

**Strict Foreclosure:** A court action foreclosure proceeding in which the lender has the right to possess the mortgaged property directly upon default on the mortgage agreement. The lending institution obtains title directly without the requirement of holding a foreclosure auction sale. This type of foreclosure is rarely used.

**Subject-to:** The transfer of rights to pay a debt from one party to another, with the original party remaining liable for the debt if the second party defaults.

**Subordinate Financing:** Any mortgage or other lien that has a priority lower than that of the first mortgage, or senior loan. See second mortgage.

**Subordinate Loan:** A second or third mortgage.

**Subprime Lending:** Mortgage loans and lending that does not meet conforming loan standards.

**Subsequent Rate Adjustments:** The interest rate for Adjustable Rate Loans adjusts at regular intervals. This adjustment period could in some cases differ from the initial interest rate duration period.

**Subsequent Rate Cap:** A limit defined by most Adjustable Rate Loans for the maximum amount the interest rate may increase during annual interest rate adjustment dates. The limit often differs from the initial rate cap.

**Substitute of Trustee:** A document that is recorded to change the trustee under the deed of trust.

### **Definitions: T**

**Tax Lien:** A claim against real estate for the amount of its unpaid taxes. A municipality's claim against a property for real estate taxes is a first and paramount lien, whether or not the taxes are due. A lien can also attach to property for non-payment of federal or state income taxes.

**Temporary Buy-Downs:** A loan on which the interest rate has been bought down for a temporary period of time at the beginning of the loan by the escrowing funds at the time of closing, which will be applied to the total monthly mortgage payment as each becomes due.

**Term:** The time to maturity of a loan or deposit, expressed in month or years.

**Term Amortization:** The period of time during which principal and interest payments must be made; generally, the time needed to amortize the loan fully.

**Term Loan:** A loan with a maturity of usually three to five years, during which time interest is paid, but no payments to reduce the principal are made. The entire principal is due and payable at the end of the loan term.

**Term Mortgage:** See term loan.

**Terms:** The details, specifications, obligations, and conditions of an agreement or contract.

**Title:** A legal document showing evidence of a person's right to own or claim ownership of a property.

**Title Theory:** A property-law doctrine that a mortgage transfers title to a property to the lender, who holds it until the mortgage has been paid off, at which time the title passes to the borrower. Only a few states use this theory, and are known as title states

or title theory jurisdictions. Lien theory used in most jurisdictions provides that a lender holds only the lien not the title to the property until the borrower pays the mortgage in full. Once the loan is paid in full the lien is removed.

**Transfer Tax:** State or local tax payable when the title passes from one owner to another.

**Two-Step Mortgage:** A loan where the interest rate is fixed for the first seven years and then is adjusted one time for the balance of the loan period.

#### **Definitions: U**

**Unsecured Loan:** A loan that is not backed by collateral.

#### **Definitions: V**

**Variable Interest-Rate:** Percentage a borrower pays for the use of money, usually expressed as an annual percentage, and which fluctuates in tandem with a rate index.

**Variable Rate:** An interest rate that changes with fluctuations in such indexes as the U.S. Treasury bill index.

**Variable Rate Mortgage:** See Adjustable Rate Mortgage.

**Vendor's Lien:** The right of a seller who has not yet been paid to take back possession of sold property until its purchase price has been received from the buyer.

**Vest:** A designation of ownership or possession of a property.

**Voluntary Lien:** Any lien placed on property with the consent and cooperation of the owner.

#### **Definitions: W**

**Waiver:** A release or abandonment of a right or privilege.

**Waiver of Tax Lien:** A form to be signed by a taxing jurisdiction stating that it will not file a lien. This form is typically needed when real estate is sold by an estate.

**Warranty Deed:** A deed that contains expressed and implied covenants as to good title and right of possession.

**Workout Agreement:** A mutual effort by a borrower and lender to avoid foreclosure or bankruptcy following a default; generally involves substantial reduction in the debt service burden during an economic depression.

**Wraparound Mortgage:** A loan given to a buyer for the remaining balance on a sellers' first mortgage and an additional amount requested by the seller. Payments on both amounts are made to the lender who holds the wraparound loan.

**Writ of Execution:** A court order to a sheriff to enforce a judgment by levying on real or personal property of a judgment debt to obtain funds to satisfy the judgment amount.

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