

*Suite 608*

## **GLOSSARY OF LAND & PROPERTY TERMS**

The subject “Land & Property Issues” involves so many variables that we thought it best to start with a ‘Glossary of Terms’. Within this alphabetical list of common terms certain issues have been expanded and in other cases direct links are provided to help you get closer to the specific data you require.

This glossary has been assembled to provide you with a basic understanding, which is imperative before making a determination to act. Terms and definitions used here are to give a general understanding only. For specific instances a different meaning could apply. Examples shown within are by no means exhaustive. Do not interpret your own meaning into it, seek legal advice.

### **Abatement**

A reduction or decrease. Usually applies to a decrease of assessed valuation of ad valorem taxes after the assessment and levy.

### **Ad Valorem**

According to value. A method of taxation using the value of the thing taxed to determine the amount of tax. Taxes can be either Ad Valorem or Specific. Example: A tax of \$5.00 per \$1000.00 of value per house is Ad Valorem. A tax of %5.00 per house (irrespective of value) is Specific.

### **Appraisal**

A report made by a qualified person setting forth an opinion or estimate of property value. This term also refers to the process by which this estimate is obtained.

### **Asset**

Any item owned by an individual or company that could be converted into cash. This includes stock, vehicles, office equipment, real estate, accounts receivable, etc.

### **Asset-Backed Borrowing**

Secured business loans with assets pledged as collateral.

### **Asset/Equity Ratio**

Total assets divided by the shareholder’s equity.

**Book Depreciation**

Depreciation reserved (on the books) by an owner for future replacement or retirement of an asset.

**Businesses**

Not the operation of a business, no matter if Retail, Whole Sale, Manufacturing, but the buying and selling of any business, fall within the parameters of Commercial Real Estate.

**CAM cost**

Common Area Maintenance Cost, are all cost incurred against the property shared in common with all other tenants (Lessees). The charges are usually calculated on the actual net area each tenant occupies. These charges are commonly invoiced by the landlord (Lessor) on a monthly basis, and in advance. They are paid concurrent with the due rent and can mostly be paid with one cheque.

**CAP Rate (Capitalization Rate)**

The Capitalization rate, is the rate by which net earnings from an income stream, of a particular business activity, are multiplied to arrive at a value for that business. The actual amount must be net of all costs, and after all adjustments from unusual derivations from the norm; the **CAP** Rate is then applied and a fair value may thereby be established. If you have a spreadsheet analysis created this way it will assist greatly, when contemplating the sale or purchase of the income stream. The **CAP** Rate is sometimes confused with the expected **ROE – ROI – ROR**.

**Changes in Land-Use**

Over time, Residential Land in the form of acreage, or in the form of several Residential building lots, with or without buildings on them, can often receive a higher density designation through changes in the zoning, in conformity with the OCP (Official Community Plan). This is likely to increase the value of your property. The changes may be from a Single Plan. This is likely to increase the value of your property. The changes may be from a Single Family Residential to a Multi Family Residential zone, or also to a Commercial or Industrial zone. A simple enquiry with the City's Planning department will tell you if there is a potential, known at present, to up-zone your property in the future.

**Chattels**

Chattels are all things placed onto land or into buildings, which are not required for the basic function of the building or for the function of other improvements, and are not attached. It is another name for personal property.

**COC (Cash on Cash)**

This is a term used when expressing, that at least for calculation purposes, none of the funds are borrowed.

**Collateral**

These are assets that a borrower pledges in order to secure a loan or other credit. Those assets can then be taken in the event of default of the loan.

**Contaminated Soil**

On-site bioremediation of contaminated soil:

<http://www.intergeo-consulting.com>

**Contract**

This is an agreement between two or more parties, whereby each party gives and receives something of value from the other party. The parties, the object of the agreement, the time and place and all other pertinent details must be contained in the agreement, to make it enforceable in the event a dispute arises.

**Co-signer**

Someone other than the borrower who signs a promissory note in doing so, this person assume equal liability on the loan.

**Counter Offer**

A counter offer is the method employed to make your wishes known to the party presenting an offer to you, to adjust details which in the form offered to you, are not acceptable. The price may be too low, the closing date too soon, etc.

A counter offer is legally a new offer. It does not have to be accepted by the person having made the offer. The same applies every time a counter is made. Any change contemplated should, therefore, be made keeping that in mind.

**Debt Capital**

Capital that is raised via loans, bonds, etc., that must be repaid with interest within a set period of time.

**Debt Ratio**

A debt ratio is debt capital divided by total capital.

**Dilution of Ownership**

Dilution of ownership occurs when there is a reduction in share value resulting when additional shares of common stock are issued or when convertible securities are converted. This equally reduces each shareholder's ownership of the company/property.

## **Easement (rights)**

An easement is an encumbrance on land, usually required by utility companies and municipalities. Sometimes the easement is also registered against a title for road and utility access to adjacent properties in a new subdivision.

A right-of-way granted to a person or company authorizing access to or over the owner's land. An electric company obtaining a right-of-way across private property is a common example.

Granting an easement has a value to the beneficial owner of the easement. It is in all instances a detriment to the affected property.

An easement permits entering upon the effected land for specific purposes. It usually requires the holder of the easement to bear the cost and responsibility to repair any disturbance to the land and what is on the land.

## **Equity Capital**

Equity financing is accomplished through the selling of common stock or preferred stock to investors. This automatically reduces the stock held by the company's owners.

## **Encumbrances**

An encumbrance is a legal right or interest in land that affects a good or clear title, and diminishes the land's value. It can take numerous forms, such as zoning ordinances, easement rights, claims, mortgages, liens, charges, a pending legal action, unpaid taxes, or restrictive covenants. An encumbrance does not legally prevent transfer of the property to another. A title search is all that is usually done to reveal the existence of such encumbrances, and it is up to the buyer to determine whether he wants to purchase with the encumbrance, or what can be done to remove it.

- **Beneficial:** Those that permit and make possible the use of land.
- **Detrimental:** Those that limit the use of part or all of the property, for any reason. Could render intended development not possible or too expensive.
- **Other Encumbrances:** mortgages, right of ways, easements, registered charges of any kind.
- **Environmental Encumbrance**
  1. Land previously used, may well have been exposed to environmentally harmful substances such as pesticides, oil and gasoline.
  2. Most all waterways, marches, steep slopes, etc. may be designated environmentally sensitive, a designation which could render the entire lands useless for development. Required set-backs, mean loss of land.

Today, very stringed requirements are applied, adding significant costs and time delays to any such development. Soil tests in stages are usually necessary to establish the degree, if any, of contamination. Cost for testing and, if necessary cleanup, can be from very little to extremely costly.

### **Environmental Cleanup**

#### **United Nations:**

<http://www.unece.org/env/welcome.html>

#### **European Union:**

[http://www.europa.eu.int/pol/env/index\\_en.htm](http://www.europa.eu.int/pol/env/index_en.htm)

#### **Council of Europe:**

[http://www.coe.int/T/E/Cultural\\_Co-operation/Environment](http://www.coe.int/T/E/Cultural_Co-operation/Environment)

#### **Commonwealth:**

<http://www.thecommonwealth.org/Templates/Intenal.asp?NodeID=20639>

#### **In the United States:**

<http://www.epa.gov/epahome/rules.html>

<http://www.nemw.org/cmclean.htm>

<http://www.nemw.org/cmclean.htm>

#### **(Environmental & Public Land Issues)**

[http://www.crowley-offroad.com/environmental\\_issues.htm](http://www.crowley-offroad.com/environmental_issues.htm)

#### **In Australia:**

<http://www.loreoftheland.com.au/land/>

<http://www.energyres.com.au/environment/regulations.shtml>

<http://eprints.unimelb.edu.au/archive/00000114/>

#### **In Canada:**

<http://strategis.ic.gc.ca/epic/internet/inurpl-armur.nsf/enHome>

<http://laws.justice.gc.ca/en/index.html>

#### **In the United Kingdom:**

<http://www.envirowise.gov.uk/envirowisev3.nsf/key/DSUR5YHJEQ>

<http://www.hms.o.gov.uk/si/si2000/20000227.htm>

**Fee for Service**

A fee is charged for all consulting services. This permits everyone to choose any part of the services they feel in need of, without being committed to contract for a package, i.e.: listing or full agency agreements. It gives a choice to each person to do as much or as little as they feel inclined to do.

**Fund**

A fund is a pool of money collected by investment companies from individual investors for purchasing securities in various companies, or equities in real properties.

**Gross Income Multiplier**

An amount, which, when multiplied by the annual gross income, will theoretically determine the market value. This is a general rule of thumb which varies with specific properties and areas.

**Improvements**

Are basically all buildings or structures of any description, which are a benefit to the land and have a useful purpose. Improvements can also be other things fastened to the land, and have a beneficial purpose. Annual taxation is usually levied separately on land and improvements, showing a value for each separately.

While land usually goes up in value, improvements always go down, relative to age, condition, and obsolescence's factors.

**Income from Real Estate Assets**

- **Rental payments** - These are payments made by a tenant to a landlord, usually on a month-to-month basis, with a one month notice to quite from either side, for commercial properties. Different notice rules apply to residential.
- **Contract Rent** - This can also be a contract for simply a month-to-month tenancy, but is mostly employed to spell out the terms for a longer rental period, namely one or more years, and is generally referred to as a lease.

**Investment Horizon**

Investment horizon is the period expressed in time, measuring the time of actual ownership after which time the investment will become again available to the investor.

**Leasing vs. Renting (advantages for both tenant and landlord)**

- **For the Tenant** – A lease in excess of 3 years in duration, can be registered against the title of the land, and therefore constitutes an interest in Land. Something looked at favorably, when it comes time to raise a loan from a financial institution. Another is an option for one or more extensions of the lease period. This gives additional security of tenure for any business.
- **For the Landlord** – Security of income for a specific period of time. In the case of a sale of subject property – evaluation by income method. This can be a bonus where the improvements are older, and worth less than the capitalized stream of income.

**Lease**

A written, legal, agreement between the property owner and a tenant that stipulates the conditions under which the tenant may possess the real estate for a specific period of time and rent. This document should be signed and witnessed. A lease agreement for a duration of 3 years or more, may be registered by the Lessee against the owners land title in the appropriate land titles office, as in British Columbia, it constitutes a legal interest in the land. There are potential benefits to the Lessee in some instances.

**Lessor**

The landlord, also referred to as the lessor, either is correct. Terms should not be mixed when referred to in a contract or any other legal document.

In a lease agreement the landlord/owner is mostly referred to as the Lessor.

**Lessee**

The tenant, also referred to as the Lessee, either is correct. Terms should not be mixed when referred to in a contract or any other legal document.

In a lease agreement, the party renting is often referred to as the Lessee.

**Leasing**

Renting for a long term, under contract, usually with renewal options.

The lease payments are contract rents. All costs are usually in addition to the contract rent.

**Lease with Option to Purchase**

A lease; under which, the lessee has the right to purchase the property. The price and terms of the purchase must be set forth for the option to be valid. The option may run for the length of the lease or only for a portion of the lease period.

**IRR (Internal Rate of Return)**

This is the rate of return over a fixed number of years (5 to 10 or more) with all capital plus gains, re-invested annually and compounded, the average annual return over the total investment horizon is referred to as the IRR.

This is the truest measure of calculating the cumulative return from all investments and re-investments over the investment horizon. When used on revenue properties, the eventual gain upon the sale of the Real Estate is part of the equation. This measure usually takes into account the tax consequences to the investor, and therefore shows the real return after taxes. In this calculation, it is assumed, that the investment will be sold after the pre-determined investment horizon has been reached.

**Listing**

A listing is a legal contract form, used by the Real Estate Industry to authorize the agency to act on behalf and with the consent of the owner of the property. It identifies the owner, the property, all details of what the listing empowers the agency to do, commissions payable, and dates of beginning and end of the listing period.

**Mortgage**

A mortgage is a registered charge/encumbrance, against a title to Real Estate. A 1st mortgage has priority over all other charges/security, which may be placed subsequently on title.

**Mortgagor**

A mortgagor is a legal entity owning the title to Real Estate. It can be a natural person, or a corporation.

**Mortgagee**

A mortgagee is the person or corporation holding the security, usually for loaning money to the mortgagor.

**Offer**

Offer or contract of purchase and sale is the document by which a purchaser makes a bid to purchase the property from the vendor. The offer can be accepted as is, or in many instances is replied to with a counter offer.

Once agreement has been reached through negotiation or uncontested acceptance of an offer or counter offer, it becomes a legal contract.

- The same applies to contracts to lease, option or otherwise.

**Offer to Lease**

An offer to lease is a simple appearing document. However, when signed by all parties, it is legally binding on all those who signed and are parties to the agreement.

This is assuming that the agreement has all the elements necessary to become a legally enforceable contract. It is a fallacy to believe, that 'my lawyer can make a few changes' if I don't like something; once it has been signed and agreed to.

### **Option (Option to Purchase, Lease or otherwise)**

- Is an encumbrance to the owner of the asset.
- Is a potential benefit to the beneficial owner of the option.

An option is an agreement. A contract sets out the terms of that agreement.

It usually conveys the right to the beneficial owner of the option, to exercise very specific rights within a certain time period. The cost for the option can be negotiated, but is usually between 5% and 10% of the subjects value, as an annual cost.

### **Ownership**

Ownership provides the rights to the use, enjoyment, and alienation of property, to the exclusion of others. Concerning real property, absolute rights are rare, being restricted by zoning laws, restrictions, liens, etc.

### **Person Guarantee**

The guarantee from the owner, that in the event that the company cannot pay the loan, he or she will assume personal responsibility for it.

### **Post-Money Valuation**

This is the value of a company right after its latest round of financing. This amount is equal to the number of outstanding shares multiplied by the share price from the latest financing.

### **Pre-Money Valuation**

The agreed upon value of a company right before its latest round of financing.

### **Promissory Note**

An IOU, or promise, to pay back money borrowed. It usually takes the form of a signed agreement between the lender and the borrower and specifies all of the terms of the loan.

### **Renting**

Rentals are normally for a short term, giving flexibility to the tenant. Usually on a month to month basis, and can be terminated by either side permitting for one full rental period as the notice period. The rent may include all other associated costs. The shortfall is the fact, that there is no long-term security of tenure, as there is with contract renting, which is referred to as a lease.

## **Restrictive Covenants**

Restrictive covenants are the private restrictions limiting the use of real property. Restrictive covenants are created by deed and may run with the land, binding all subsequent purchasers of the land, or may be personal and binding only between the original seller and buyer. The determination whether a covenant runs with the land or is personal is governed by the language of the covenant, the intent of the parties, and the law in the State where the land is situated. Restrictive covenants that run with the land are encumbrances and may affect the value and marketability of title. Restrictive covenants may limit the density of buildings per acre, regulate size, style or price range of buildings to be erected, or prevent particular businesses from operating, owning or occupying homes in a given area.

### **Right of Refusal (i.e: The right of first refusal to.....)**

- **An encumbrance for the owner of the asset** – giving a right of first refusal limits the ability to deal freely, as the beneficial holder of that right must be given an opportunity to exercise or refuse to exercise that right, before a third party can be dealt with.
- **An asset for the beneficial owner of the right of refusal** – It usually offers an opportunity to purchase at a time and at a price, as offered to a vendor by a third party purchaser. It also leaves the option not to purchase at all. This may apply to the purchase or lease of Real Estate of any type, as well s to a business, or a partial interest in either.

Usually there are no specific terms attached to a right of refusal.

## **Right of Way**

- An encumbrance on land

An encumbrance usually required by utility companies, municipalities. It is sometimes registered against a title for road and utility access to adjacent properties in a new subdivision.

Granting a right of way has a value to the beneficial owner of the right. It is in many instances a detriment to the affected property, and should not be treated lightly.

A right of way permits use for those purposes identified in the registered plan and attached schedule. It generally permits the use and disturbance of private lands, without compensation to the owner of the land.

## **Re-zoning**

This directly affects bare lands with an existing zoning, or lands over which the authorities having jurisdiction, have indicated, that it can be *re-zoned*; subject to certain restrictions and provisions. This can be in the form of one *single* acre, or in the form of lots in a subdivision.

**ROE (Return on Equity)**

This represents the return on the actual cash invested – not borrowed.

**ROI (Return on Investment)**

This measures the return on your investment on the whole project. This is where experienced investors use leverage to their advantage. Borrowing money at a lower rate than the rate you are receiving from your investment, increases the rate of return on your capital. Say, if the rate of return is 9% overall, your return on equity may well be 12%.

**ROR (Rate of Return)**

This is a percentage (%) on the total investment based on the sale/purchase price. It will measure the total annual return in percentage (%) regardless of where the moneys are originating, your own or borrowed (before taxes).

**Secured Loan**

A loan backed by hard assets or collateral.

**Signage**

The sign for your business.

"A communication device whose message and design relates to a business, an event, goods, profession, or service being conducted, sold, or offered on the same property as where the sign is erected."

Signs are considered "speech", and in the United States are **legally protected** as such. To help you understand the legal aspects of signage, as well as their protection under the First, Fifth and Fourteenth Amendments, you can go directly to the "Legal Considerations" section.

<http://www.sba.gov/starting/signage/index.html>

<http://www.sba.gov/starting/signage/legalconsiderations.html>

<http://www.epa.gov/cpg/products/signage.htm>

**Subdivision**

A larger parcel of land, usually several acres, which can be subdivided into a number of residential building lots, is also considered a commercial activity, as it is done as a business, the business being the development and subsequent marketing of the land for profit.

**Surface Rights**

This pertains to the right (easements) to use the surface of land, including the right to drill or mine through the surface.

**Unsecured Loan**

This is a loan which is not backed by hard assets or collateral but solely on the good credit of the borrower.

**Valuation**

Valuation is the process of determining a current value on either a company or on real property.

**Value (effects on)**

- **Positive** - Zoning, location, available public services, available utilities, usability factor of land, quality of improvements, latent development ability to a higher use, lack of similar Real Estate, cleanliness of surrounding land or developments, inclusion the in OCP.
- **Negative** - Contamination of land, uneconomical size or shape of the land, right of ways, easements, under the developed improvement when compared to the value of the land, incompatibility of adjacent improvements, unclean or ill maintained surroundings poor visual surroundings, noise, poor or no view, lack of public services or utilities, and man others not listed here.

**Wraparound mortgage**

A wraparound mortgage includes the remaining balance on an existing first mortgage plus an additional amount requested by the mortgagor. Full payments on both mortgages are made to the wraparound mortgagee, who then forwards the payments on the first mortgage to the first mortgagee.

**Zoning (or Council Planning – seeking Planning Permission)**

Zoning ordinances and regulations are laws that define and restrict how you can use your property. Cities, counties, townships and other local governments adopt zoning plans in order to set development standards to assure that land is used for the common good.

Zoning is a regulatory tool used by any authority having jurisdiction over the use of the land within their region.

In some countries this is referred to as: “Council Planning” and is regulated by the Local Council Authorities; when making application you would be seeking “Planning Permission” from the Local Council.

A specific designation placed on sections or parcels of land, identifies in great detail the types of uses, and the manner in which a property may be developed.

Information on existing or obtainable zonings can easily be found at the Regional District Office, or at the Planning Department of any Municipality.

You may be unpleasantly surprised to find you can't use your property as intended without violating zoning ordinances. There are many ways a lawyer can help you to get around the technical requirements of the regulations.

## **Non-Conforming Use**

Existing properties are often used in a manner that's inconsistent with a new zoning ordinance. Such uses are referred to as non-conforming because:

- The nature or characteristics of the building itself don't conform to the zoning ordinance
- The activity going on in the building doesn't conform

For example, a factory located in a residential zone is a non-conforming use. A two story building located in a one-story zone is also a non-conforming use.

Generally, you don't have to quit an existing non-conforming use and may continue after the adoption of a zoning ordinance.

However, the right to continue a non-conforming use may be lost if the non-conforming use is abandoned. For example, if a fast-food restaurant is operated in a storefront in an area that is later zoned to exclude all food-related operations, the restaurant may continue to operate. If the restaurant closes, the right to continue the use may be lost if the same restaurant is not reopened or if some other similar food-related use is not begun within a certain period of time. If the building itself is non-conforming, the right to be non-conforming may be lost if the building is completely, or even partially, destroyed.

Amortization is another way to limit non-conforming uses. Under this approach, a non-conforming use is permitted to continue for a specific period of time, after which it must be converted to a conforming use.

## **Conditional Use**

A conditional use is a use which is permitted under a zoning ordinance, but which must meet certain conditions. For example, a zoning ordinance may permit professional offices in a residential zone if at least four off-street parking places are provided.

When a use is conditional, the zoning ordinance often will require the property owner to file an application with local officials so that they may determine whether the conditions have been met.

## **Variances**

A variance or special use permit is an exception to the requirements of a zoning ordinance. Most statutes permitting the adoption of zoning ordinances also detail the circumstances under which variances may be granted.

Usually, you must show some kind of hardship to justify getting a variance. Some examples of hardship are:

- An undersized lot on which a variance is needed to construct any useful structure.
- An odd-shaped lot cannot satisfy the side-yard and setback requirements for the construction of a residence that would otherwise be permitted in the zone.

## **Zoning Restrictions**

Use requirements refer to how property can be used. Typical zoning categories include:

- Residential
- Commercial
- Industrial
- Agricultural
- Recreational

Zoning laws will set forth may use restrictions, such as:

- The height and overall size of buildings
- Their proximity to one another
- What percentage of the area of a building lot may contain structures
- What particular kinds of facilities must be included with certain kinds of uses

The bulk requirements of a zoning ordinance refer to:

- The height and size restrictions on buildings including the number of stories in a building
- The square feet of space which a building provides
- The percentage of area it covers on a building lot
- The minimum lot size requirements, if any

The setback and side-yard requirements of a zoning ordinance refer to the distance between the front and back property lines and from the side property lines.

## **Zoning Restrictions on Subdivisions**

Land is divided up into legal parcels. If you own land and want to divide it up; you have to go through an authorization process to create new legal parcels.

Most zoning ordinances place limitations on a property owner's ability to subdivide land. There are rigorous procedural requirements for notices, hearings, and consideration by zoning authorities before permission can be given to subdivide property.

A major subdivision, however, will be subject to more rigorous rules. At a minimum, these rules would include requirements that a developer prepare a site plan or a subdivision map, which is a comprehensive map, showing the planned use of a particular property in detail.

In addition, the subdivision laws may require:

- The lots be of a particular size
- The streets be of a particular width and quality
- The water, gas, and sewer lines of a particular type be supplied

Some states permit local governments to require developers who are subdividing property to pay for some portion of the municipal improvements that are necessary for residential use, such as:

- Sewers
- Schools
- Roads

A subdivision will go through many public hearings, giving ample opportunity for anyone to speak in favour of or against a project.

### **Spot Zoning**

Local land use plans and zoning ordinances usually contain restrictions on land uses in specific areas (or zones) outlined in the plan or ordinance.

Once local officials have adopted a plan and ordinance, property owners may seek exceptions to the requirements and limitations either through:

- An amendment to the plan or ordinance
- An application for a variance or special use permit

In both case, the amendment or application may be opposed on the grounds that permitting special exceptions for specific properties is inconsistent with the overall land use plan or ordinance, and constitutes illegal spot zoning.

Whether or not a particular exception constitutes illegal spot zoning or is merely a permissible exception greatly varies according to:

- The fact of the property use
- The provision of the applicable enabling statute
- The land use plan in question

### **Zoning Problems**

You may be unpleasantly surprised to find you can't use your property as intended without violating zoning ordinances. There are many ways a lawyer can help you to get around the technical requirements of the regulations.