

THE SHORTER
ENCYCLOPEDIA OF REAL ESTATE TERMS

The Shorter
ENCYCLOPEDIA
of
REAL ESTATE
TERMS

BASED ON ENGLISH AND NORTH AMERICAN PRACTICE,
including Australian, Canadian, New Zealand, Scots Law,
Civil Law and Latin terms.

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To Maurice Hurrell

who provided invaluable comments and suggestions on the First and Second Editions of the
ENCYCLOPEDIA OF REAL ESTATE TERMS

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CONTENTS

	PAGE
PREFACE	ix
ACKNOWLEDGMENTS	xi
USER GUIDE	xiii
TEXT OF ENTRIES	1
Appendix A: PROFESSIONAL ASSOCIATIONS	912
APPENDIX B: MEASUREMENTS	935
APPENDIX C: FINANCIAL FORMULAE	942
APPENDIX D: ABBREVIATIONS AND ACRONYMS	951

PREFACE

The First Edition of the Encyclopedia of Real Estate Terms was started over 30 years ago. It was followed by the Second Edition, published in 2000 – now it is time for The Shorter Edition. This book is based on the Second Edition of the Encyclopedia, but excludes the French terminology and many of the detailed reference sources. However, as the number of terms continues to grow, the Shorter version is still longer than the First Edition.

The Shorter Encyclopedia retains my original three aims: (i) to provide a clear and precise explanation of the meaning of a particular word or phrase; (ii) to help the user find answers to many of the questions that occur in real estate today (if not directly, then by a ready reference to other sources); and (iii) to identify where a problem might occur upon which, when required, further advice and counsel should be sought.

The Shorter Edition continues to be definitional, but goes much further. It chronicles that which has been said relating to a particular term – or, to be more precise, over 7,500 terms – with extensive cross-referencing. In addition, the text sets out many of the aspects of real estate that follow from the explanation of the meaning and significance of a particular word or phrase; endeavoring to suggest answers to many of the questions that arise on a given subject. In total, there are more than 1,600 sources for further reference (including over 600 cases, 500 statutory or code references and over 400 bibliographical references). Thus, it is a comprehensive reference book on real estate – a dictionary, a thesaurus and an *Encyclopedia*, all in one book. The terminology is drawn from all areas of the real estate and related areas of business: accounting, appraisal, development, finance, insurance, investment, law, surveying, taxation, valuation and zoning.

The Shorter Edition is international in scope drawing on material from the United Kingdom, the United States, Canada, Australia and New Zealand, as well as Latin and Civil Law terms. Every effort has been made to distinguish between the different sources, so that the user may readily identify a source relevant to his area of practice or concern and to identify similarities and differences in the application of a word or phrase in various countries. This should serve to assist those who practice in the increasingly international business of real estate.

This book is a distillation of the work that went into the First and Second Editions of the Encyclopedia of Real Estate Terms and would not be as it is without the help of all those who assisted me in the preparation of those versions and I should like to repeat my appreciation to all those who helped on those endeavours.

I should also like to thank Kate Robinson and Liz York who have been responsible for proof reading much of the text of this version, finding numerous errors, and making many suggestions that have improved the content no end.

In addition, I should like to express my appreciation to John Knox, Deborah Lloyd and Andrew Zoltowski who have offered advice and in other ways helped me put this book together.

As far as possible, entries are current as at the end of 2003 and every care has been taken to ensure accuracy.

Finally, I must accept full responsibility for all errors and omissions in the text.

Damien Abbott

Comments and suggestions from users for alterations or revisions are welcome and can be sent to shortersuggestions@deltaalpha.com.

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The author and publisher would like to acknowledge all those whose works are quoted in this book. In particular, the following who have granted their permission to reproduce definitions or extracts from the following publications to which they, or the authors, own the copyright:

The American Law Institute for permission to reproduce extracts from the Restatements of the Law, especially the *Restatement of Contracts*; *Restatement of Property*; and the *Restatement of Torts*.

The American Law Institute and National Conference of Commissioners of Uniform State Law for permission to reproduce extracts from the *Uniform Commercial Code*.

The Appraisal Foundation for extracts from its *Uniform Standards of Professional Appraisal Practice* (2004 edition).

The Australian Property Institute and the Property Council for Australia for extracts from its *Glossary of Property Terms* (2000).

The Building Owners and Managers Association International for the extracts from its *Standard Method for Measuring Floor Area in Office Buildings* (1996) in respect of ‘gross building area’ and ‘rentable area’.

Butterworths for the use of extracts from: *The All England Law Reports*, *Cheshire and Burn’s Modern Law of Real Property* (16th ed. 2000); *Cheshire, Fifoot & Furmston’s Law of Contract* (14th ed. 2001); *Halsbury’s Law of England* (4th ed. Reissue); Lord Denning’s *The Discipline of Law* (1979); *Maudsley & Burn’s Land Law: Cases and Materials* (7th ed. 1998).

The Incorporated Council of Law Reporting for England and Wales for extracts from its *Law Reports* and *Weekly Law Reports*.

The International Council of Shopping Centers for the definitions of ‘gross leasable area’, ‘merchants association’, ‘neighborhood shopping center’ and ‘shopping center’.

Merriam-Webster, Incorporated for extracts from the definitions of ‘basement’, ‘exterior’, ‘forest’, ‘meadow’, ‘obligation’, ‘occupant’, ‘parish’ and ‘shopping center’ contained in *Webster’s Third New International Dictionary, Unabridged*.

Oxford University Press for extracts from the definitions of ‘alienation, ‘assent’, ‘neighbour’, ‘possession’, ‘puff’, and ‘storey’ contained in *The Oxford English Dictionary* (2nd ed. 1989).

Routledge & Kegan Paul for extracts from the entries for ‘adjacent, adjoining, contiguous’, ‘border, boundary’, ‘offer, bid, tender, propose’, ‘gain, profit, emolument, lucre’, ‘outwards, external, exterior’, ‘occupancy, occupation’, and ‘place, spot, site’ contained in *Crabb’s English Synonyms* (1816, reprinted 1982).

The Royal Institution of Chartered Surveyors for extracts from the definitions of ‘existing use value’, ‘market value’, ‘willing buyer’ and ‘willing seller’ contained in the *Appraisal & Valuation Standards* (5th ed. ‘The Red Book’ 2003); and definitions of ‘effective floor area’, ‘gross external area’, ‘gross internal area’, ‘gross site area’, ‘net internal area’ and ‘retail area’ contained in the *Code of Measuring Practice: A Guide for Surveyors and Valuers* (5th ed. 2002).

Sweet & Maxwell for extracts from: *Gale on the Law of Easements* (17th ed. 2001); *Megarry & Wade’s Law of Property* (6th ed. 1999); *Exclusion Clauses in Contracts* (2nd ed. 1985); *Williams’ Contract for the Sale of Land and Title to Land* (4th ed. 1975); and *Woodfall’s Landlord & Tenant* (28th ed. ©1978).

West Group for extracts from the definitions of ‘trust company’, ‘vacant possession’, ‘writing’ contained in *Black’s Law Dictionary* (6th ed 1990); and for extracts from *American Jurisprudence, 2d.* ©1962-1999; *Corpus Juris Secundum* ©1985-1999; and *Corbin on Contracts* ©1960-1999, as well as quotations from the National Reporters, all of which are reproduced with permission.

USER GUIDE

Alphabetical order

Words are placed in word-by-word order. In this respect, hyphenated words are treated as separate words, unless there is an optional spelling that creates one word.

Thus, **at-risk rule** comes before **at sight**, **cooperator** comes before **co-ownership**; **coal** comes before **co-assurance**; and **package-deal contract** comes before **package insurance policy**. Where two similar or derivative words or terms are used together (as with **dominant estate** or **dominant tenement**), these also are in alphabetical order, unless one spelling or form of usage predominates over another.

Cross-references

Cross-references are marked in **boldface type**. Such entries may be in the body of the text or at the end where they are prefaced by 'cf.', 'See' or 'See also'. These cross-references are an integral part of the Encyclopedia. Such terms need to be understood and, if necessary, referred to for a complete understanding of any particular entry. The insertion of a cross-reference is based on various criteria: related meaning, related subject matter, entries that contain other supporting (or contradictory) material, or entries that contain additional sources of reference. In many cases, the significance of the points surrounding any word or phrase are only fully appreciated by understanding a cross-referenced term, e.g. **trade fixture** requires an understanding of **fixture**; **commission** is dependent on **procuring cause** or **ready, able and willing**; **exclusionary zoning** should be contrasted with **inclusionary zoning**; and a **lease** compared to a **licence**. Boldface is used to emphasize a term only the first time it appears in an entry, but the importance of that term's meaning is equally important in any subsequent usage.

Gender pronouns

Pronouns that are used in a general context are usually in the masculine form. This follows common historical practice and no offence is intended, and, it is hoped, none is taken. It can only be pleaded that 'he or she' may be considered unnecessarily verbose in some contexts; in other contexts, the use of 'she' may be taken as gender specific.

National or linguistic references

Many terms are marked to indicate that they are more applicable to a particular country, or have a linguistic meaning that derives from, or may be applied to, one country more than another. However, as real estate investment becomes more international, many

terms creep into usage elsewhere – especially terms of financial usage (e.g. collateralized mortgage obligation). On the other hand, terms that were once used in one country (e.g. ‘conditional fee’ in England) have now become obsolete there, but remain in use, for example, in some jurisdictions in the United States.

The abbreviations are used to indicate the country of primary (but not necessarily exclusive) usage:

(BrE) Terms or spellings that are used in British English. Such terms or spellings are also used in other English-speaking countries (although there may be local variants that are not included in this book). However, these terms are not generally used in the United States and in many cases the alternative use is indicated as a cross-reference.

(Eng) Terms that originate from and are used wholly or predominately in English law (in particular terms of English statutory derivation). Such terms may be used in other English-speaking countries (especially those that have adopted the common law), but they are not generally used in the United States. Many of these terms are also applicable in the rest of the United Kingdom, but in some instances the statutory law provisions differ; accordingly the entry in its entirety may be applicable only in England and Wales. In most cases, tax terms are equally applicable to Scotland and Northern Ireland, although there may also be local variations.

(AmE) Terms or spellings that are used in American English. Such terms, or spelling, may be used also in other English-speaking countries (and there may be local variants that are not included in this book). However, these terms are not widely used in the United Kingdom and in many cases the alternative use is indicated as a cross-reference.

(US) Terms that are used wholly or predominately in the United States; especially in a legal or a particular business context. Such terms may be used in other English-speaking countries (especially in the context of finance and commerce). Generally the most commonly used definition is included, with reference to some of the differences between jurisdictions; but space does not permit for the inclusion of all variations (in this respect the complete edition of the **Encyclopedia of Real Estate Terms** provides more comprehensive coverage).

(Aus) Terms used wholly or predominately in Australia.

- (Can) Terms used wholly or predominately in Canada.
- (Civ) Terms of civil law derivation.
- (HK) Terms that are used wholly or predominately in Hong Kong.
- (Ire) Terms that are used wholly or predominately in Irish land law.
- (NZ) Terms that are used wholly or predominately in New Zealand.
- (Scot) Terms that are used wholly or predominately in Scots law.

Case citations

Cases from non-US sources are in *italics* (including cases from English, Scots, or other Commonwealth courts), with the year after the name of the parties, e.g. *O'Brien v Robinson* (1984) 13 HLR 7 (HL). United States cases are in Roman type, with the year of the decision at the end, e.g. *Village of Euclid v. Amber Realty Co.*, 272 US 365, 47 S Ct 114, 71 L Ed 303, 314 (1926).

Parenthetical designations after cases (such as (Aus) (Can) (Scot) (NZ)) indicate the appropriate jurisdiction. In most instances an indication is given if the decision is from an appellate court. (See Appendix D for a list of Abbreviations.)

Statutory references

United States statutes are set out in the following form:

Fair Housing Act of 1968, Real Estate Settlement Procedure Act of 1974, Comprehensive Environmental Response, Compensation, and Liability Act of 1980, generally followed by the reference to the United States Code Annotated (USCA).

English statutes are set out in the following form:

Housing Act 1985, Law of Property Act 1925, Town and Country Planning Act 1990, and in most instances the references are abbreviated, e.g. HA 1985, LPA 1925, TCPA 1990. (See Appendix D for a list of Abbreviations.)

Spelling

Spelling is based predominately on *The Oxford English Dictionary* or *Webster's Third New International Dictionary, Unabridged*. A list of some of the major spelling differences that arise in the Encyclopedia are set out below:

American

acknowledgment
amortization/amortize
authorization
bylaw or byelaw
capitalization/capitalize
center
check
collateralization
color
defense
dwelling house
fulfill
installment
-ize
-ized
judgment
license
meter
neighbor
organization
realization
securitization
sublease
unitization

British

acknowledgement
amortisation/amortise
authorisation
by-law
capitalisation/capitalise
centre
cheque
collateralisation
colour
defence
dwelling-house
fulfil
instalment
-ise
-ised
judgement
licence
metre
neighbour
organisation
realisation
securitisation
sub-lease
unitisation

In entries that relate predominantly to usage in Great Britain (especially those based on current English law), British spelling is preferred, and in entries that relate predominantly to the United States, American spelling is preferred. It is hoped that, in this way, the spelling will correspond to that which is more familiar to the user when referring to a particular entry.