

Legal Terms

Abandonment - In the law of property, the voluntary relinquishment of right, title, claim, and possession of personal property with the intention of terminating ownership, but without vesting the ownership in any other person.

Adverse possession - Continual possession of another's land in an open and notorious fashion with an intent to take it away from them.

Affidavit - A declaration or statement of facts reduced to writing and sworn to or affirmed by the party making it before an authorized public officer.

Article nine - A part of the Uniform Commercial Code (UCC) which applies to situations where personal property or fixtures are used to secure the payment of debts or the performance of an obligation.

Assignment - Transfer of property (real or personal) to another including all rights associated with the assignment.

Assignee - One to whom a right, title, or interest is assigned; grantee.

Assignor - One who assigns a right, title, or interest to another; grantor.

Assume the loan - The buyer is obligated personally to repay an existing loan taken out by seller, as a condition of the sale.

Attractive nuisance doctrine - A rule imposing a duty upon a landowner who maintains upon his or her premises a condition which is dangerous to

children of tender years and which may reasonably be expected to attract children of tender years. Duty to take such precautions as a reasonably prudent man would take to prevent injury of children.

Bailment - The transfer of possession of personal property from the bailor to the bailee, without a transfer of title, for some temporary purpose. The possession is to revert to the bailor of the property to be otherwise disposed of as directed by the bailor.

Bailee - The person to whom personal property is delivered under a contract of bailment.

Bailor - the person who delivers personal property to another person in a contract of bailment.

Bankruptcy - Under bankruptcy the debtor will receive the protection of the automatic stay and generally will be eligible for the discharge of many of his/her obligations. In general, a debtor's creditors may petition to have a person put into bankruptcy. However, because of the uncertainties involved in farming operations, farmers are exempt from such involuntary bankruptcy.

Chapter 7 Bankruptcy - Chapter 7 bankruptcy is a liquidation, or straight bankruptcy with no chance for reorganization. The debtor must file a list of creditors, a schedule of assets and liabilities, current income and expenses, and a statement of financial affairs. Under Chapter 7 the debtor's property is collected by a trustee and distributed to creditors according to priorities established in the Bankruptcy Code.

- **Chapter 11 Bankruptcy** - Under Chapter 11 a farmer or others can reorganize business operations as an alternative to liquidation. The farmer may continue operating the farm and proposes a plan under which all or part of the farming operation continues and the business debts are repaid.

- **Chapter 12 Bankruptcy** - Chapter 12 was designed specifically for family farmers. Secured debts are written down to the value of the collateral with the remaining debt from the secured obligations treated as unsecured debt. The debtor is required to apply all income above family living expense and the needs of the business to the plan. Unsecured debt remaining after the plan's three to five year period is generally discharged.

- **Chapter 13 Bankruptcy** - In a Chapter 13 rehabilitation, individual wage earners and others with regular income develop a plan under which debts are paid over time from future income. The debtor is discharged from all debts provided for under the plan. It is an alternative for farmers with small or medium sized operations.

- **Automatic stay** - The filing of any bankruptcy petition stops all collection efforts, all harassment, and all foreclosure actions. This automatic stay is one of the fundamental debtor protections provided by bankruptcy laws, however it does not prevent collection of alimony or child support.

- **Discharge of debts** - One of the most important features of bankruptcy, regardless of which alternative is chosen, is the opportunity for discharging debts. In general, debts that arose prior to the filing of the bankruptcy petition are dischargeable in bankruptcy except for debts that are specifically non-dischargeable and except when the debtor's misconduct results in no discharge.

**Conservator** - A person appointed by the court to protect and manage the interests of the estate (both property and business matters) of an incompetent person.

**Continuance** - The postponement of a legal proceeding by agreement or by operation of law.

**Contract** - A legally enforceable agreement to do (or not to do) a particular thing. To form a contract both an offer and acceptance must be given.

- **Breach of contract** - Failure, without legal excuse, to perform as required by a contract. The wronged party has several alternative courses of action including seeking a court order for specific performance and suing for money damages if the subject matter of the contract is unique.

- **Consideration** - An act or promise given in exchange for something. Anything of value given to induce another to enter into a contract.

- **Contract for deed** - A method of selling and financing property whereby the buyer obtains possession but the seller finances the transaction and retains the title. These are commonly referred to as land **installment contracts** in Iowa.

- **Liquidated damages** - An amount of money specified in a contract as compensation to be paid if the contract is not satisfactorily completed.

- **Money damages** - Compensation paid in lieu of contract performance.

- **Specific performance** - An equitable remedy to compel a person to do precisely what he/she ought to have done under the terms of contract.

- **Statute of frauds** - A law requiring that certain types of contracts be written in order to be enforceable in a court of law (such as sales of land or sale of goods over \$500).

**Covenants** - A covenant represents a promise or commitment. It is a written agreement or promise in nature, a notice of condition and restrictions; often privately imposed in deed and lease restrictions.

- **Covenant against encumbrances** - The grantor warrants that there are no encumbrances other than those stated in the deed.

- **Covenant of further assurance** – The undertaking of a covenant on the part of the vendor of real estate to do further acts for the purpose of perfecting the purchaser's title as the latter may reasonably require. (i.e. The grantor will produce and deliver to the grantee any subsequent documents necessary to make good the grantee's title.)
- **Covenant of quiet enjoyment** - The grantor warrants that the grantee of an estate shall enjoy the possession of the premises in peace and without disturbance by hostile claimants.
- **Covenant of seizin** - The grantor warrants that he/she is the owner.
- **Restrictive covenants** - Clauses placed in deeds and leases to control how future owners and lessees may or may not use the property.

**Deed** - A written document that, when properly executed and delivered, conveys title to real property.

- **Bargain and sale deed** - A deed that contains no covenants, but does imply that the grantor owns the property being conveyed.
- **Correction deed** - A document used to correct an error in a previously recorded deed.
- **Deed restrictions** - Provisions placed in deeds to control how future owners may or may not use the property.
- **Executor's deed** - A deed used to convey the real property of a deceased person.
- **Gift deed** - A deed executed and delivered without consideration. (i.e. A deed that states "*love and affection*" as the consideration.)
- **Guardian's deed** - Used to convey property of a minor or legally incompetent person.

• **Quitclaim deed** - A legal instrument used to convey whatever title the grantor has. It contains no covenants, warranties, nor implication of the grantor's ownership.

• **General warranty deed** - An assurance or guarantee that something is true as stated making it the highest quality of title. A deed which usually contains the covenants of seizin, quiet enjoyment, encumbrances, further assurance and warranty forever.

• **Special warranty deed** - The grantor warrants title only against defects occurring during the grantor's ownership, but not before that time.

**Default** - The failure to perform a legal or contractual duty, to observe a promise or discharge an obligation, or to perform an agreement.

**Deferral** - Postponing payments of principal or interest until a future time.

**Deficiency judgment** - A judgment against a borrower if the foreclosure sale does not bring enough to pay the balance owed on a mortgage debt.

**Earnest money deposit** - Money that accompanies an offer to purchase as evidence of good faith. Normally this money is applied against the purchase price. However, the contract often provides for forfeiture of this sum if the buyer defaults.

**Easement** - The right or privilege one party has to use land belonging to another for a special purpose not inconsistent with the owner's use of the land. This is not a right of possession.

• **Easement appurtenant** - An easement that runs with the land. A right in that particular parcel of land and passes with the title to that land upon a subsequent conveyance.

• **Easement by necessity** - An easement created by law, usually for the right to travel to a land-locked parcel of land.

- **Easement by prescription (Adverse Possession)** - Acquisition of an easement by open and notorious, hostile, and continual use meeting the statutory requirement.

**Emblements** - Crops annually produced by labor of tenant.

**Eminent domain** - The right of government to take privately held land for public use, provided fair compensation is paid.

- **Condemnation** - The legal proceeding involved in eminent domain.
- **Severance damages** - Compensation paid for the loss in market value that results from proceedings that split up property in a partial taking.

**Encroachment** - The unauthorized intrusion of a building or other improvement onto another person's land, a highway, or a waterway.

**Estate settlement** - Settling the affairs of a deceased person.

- **Administrator** - A person appointed by a court to carry out the instructions found in a will.
- **Bequest (legacy)** - Personal property received under a will.
- **Curtesy** - The legal right of a widower to a portion of his deceased wife's real property.
- **Devise** - A transfer of real property by means of a will.
- **Dower** - The legal right of a widow to a portion of her deceased husband's real property for support of herself and children.
- **Escheat** - The reversion of a person's property to the state when death occurs and there is no will or heir.

- **Executor** - A person named in a will to carry out its instructions (masculine) executrix (feminine).

• **Heirs** - Those designated by law to receive the property of the deceased when there is no will.

• **Probate court** - A court of law with the authority to verify the legality of a will and carry out its instructions.

**Exempt property** - Property designated as exempt cannot be reached by creditors.

- **Homestead protection** - State laws that protect against the forced sale of a person's home.

**Fence laws** - Laws affecting the requirement to build and maintain boundary and partition fences.

• **Fencing out approach** - Livestock are allowed to roam and property owners preferring to keep animals off their premises put up fences to keep them out.

• **Fencing in approach** - Animals are to be restrained from running at large. This is the approach followed by Iowa law.

**Fixture** - An object that has been attached to land so as to become part of the real estate. This also includes goods when they become so related to the real estate that an interest in them arises in real estate law (i.e. a furnace, counter-tops, sprinkler systems).

**Forbear** - Not to act.

**Foreclose** - The procedure by which a person's property can be taken and sold to satisfy an unpaid mortgage debt. Destroys the right of redemption.

• **Strict foreclosure** - The lender acquires absolute title without the need for a foreclosure sale.

**Forfeiture** - The loss of property that occurs when the debtor fails to pay or perform an obligation which has been secured by the property, usually involving a contract for the sale of land.

**Fraud** - An act intended to deceive for the purpose of inducing another to give up something of value or surrender a legal right.

**Garnishment** - A proceeding in which money or property due the defendant and in the hands of a third person is attached for the purpose of applying it to the debt of the defendant.

**Grant** - The act of conveying ownership.

- **Grantor** - The person who conveys ownership or transfers property.
- **Grantee** - The person who acquires ownership.

**Improvements** - Any form of land development such as buildings, roads, fences, pipelines, etc which are not considered maintenance and repair costs..

**Injunction** - A restraining order issued by the court which prohibits the performance of an act by the defendant.

**Insurable interest** - The insured financial interest in a property.

**Law** - The rules of conduct established by the authority or custom of a nation.

- **Civil law** - Deals with conflicts between and among citizens. The state only provides a forum (court) for resolving differences.
- **Criminal law** - Deals with conflicts between a citizen and the law. The state is involved as an active party because the act is viewed as an offense against the state.
- **Case law** - Individual court decisions.

- **Common law** - Law that develops from court decisions as well as custom and usage over long periods of time.

- **Statutory law** - Law created by the enactment of legislation.

**Lien** - A potential hold or claim which one person has on the property of another to secure payment of a debt or other obligation.

- **Judgment lien** - A claim against property in favor of the holder of a court ordered judgment.

- **Mechanic's lien** - A claim placed against property by unpaid workmen or material suppliers.

- **Mortgage lien** - An interest in property which is offered by its owner as security for the repayment of a debt.

- **Perfecting the lien** - The filing of a lien statement within the required time limit.

- **Tax lien** - A charge or hold by the government against property to insure the payment of taxes.

**Life estate** - The conveyance of an interest for the duration of someone's life.

- **Life tenant** - One who hold an estate for the period of their lifetime or that of another specified person.

- **Remainder interest** - A future interest in property held by a remainder person usually following a life estate or term interest.

- **Remainder person** - One who is entitled to hold a remainder interest. Commonly referred to as a remainder man.

**Loan provisions** - Below are provisions sometimes found in loans.

- **Acceleration clause** - Allows the lender to demand immediate payment of the entire loan if the borrower defaults.
- **Alienation clause** - Gives a person the right to transfer or forbids him/her from transferring the property which is the subject of the document.
- **Call** - A lender's right to require early repayment of the loan balance.
- **Defeasance clause** - A mortgage clause that states the mortgage is defeated if the accompanying note is repaid on time.
- **Due-on-sale clause** - A clause that gives the lender the right to call the entire loan balance due if the property is sold or otherwise conveyed.
- **Prepayment penalty** - A fee charged by a lender when a loan is paid off in full before its due date.
- **Prepayment privilege** - It allows the borrower to repay early without penalty.

**Mortgage** - An interest in land created by a written instrument (called a promissory note) providing security for the performance of a duty or the payment of a debt.

- **Mortgagee** - The party holding the mortgage, the lender.
- **Mortgagor** - The party giving the mortgage, the borrower.
- **First (senior) mortgage** - The mortgage loan with the highest priority for repayment in event of foreclosure.
- **Second mortgage** - The mortgage loan that ranks immediately behind the first mortgage in priority.

- **Subordination** - The voluntary acceptance of a lower mortgage priority than one would otherwise be entitled.
- **Release of mortgage** - An act of the lender indicating that the loan has been repaid.
- **Partial release** - A release of a portion of a property from a mortgage.
- **Satisfaction of mortgage** - A certificate from the lender stating that the loan has been repaid.
- **Chattel mortgage** - A pledge of personal property to secure a note. (Normally superseded by introduction of the Uniform Commercial Code.)
- **Package mortgage** - A mortgage secured by a combination of real and personal property.
- **Shared appreciation mortgage** - A mortgage that calls for a sharing of any increase in value of the asset used for security between the owner/borrower and the lender.
- **Reverse mortgages** - A mortgage that allows the borrower to obtain small incremental sums of money on an identified account on a farm or a home. It has been particularly useful in capturing equity on a farm without an immediate sale of the property.
- **Wraparound mortgage** - A mortgage that encompasses existing mortgages and sometimes a new loan, and is subordinate to them.

**Negligence** - A failure to act as a responsible and reasonably prudent person under the circumstances when someone or their property is damaged as a result (i.e failure to exhibit care which results in damage).

- **Contributory negligence** - If the complaining party's own actions contributed to the problem, recovery for damages may be denied.

- **Comparative negligence** - Assessing degrees of fault to both parties which may result in reduction of plaintiff's damage award.

**Notary public** - A person authorized by the state to administer oaths, attest and certify documents, and take acknowledgments.

**Note (promissory note)** - A written express and absolute promise to repay a debt at a specified time.

**Novation** - The substitution of a new contract, debt, or obligation for an existing one between the same of different parties.

**Obligee** - The person to whom a debt or obligation is owed (the promisee).

**Obligor** - The person responsible for paying a debt or obligation (the promisor).

**Option** - The right at some future time to purchase or lease a property at a predetermined price. This acts as a continuous offer and requires consideration.

**Overencumbered property** - This occurs when the size of the loan greatly exceeds the market value of the collateral property.

**Police power** - The right of states to enact laws and enforce them for the order, safety, health, morals, and general welfare of the public.

**Power of attorney** - A written authorization to another to act on one's behalf or as one's agent.

**Property ownership** - Below are definitions of various ways of owning property.

- **Fee simple** - Owner is entitled to the entire property with unconditional power to both use and transfer. This is the highest level of ownership.

• **Undivided interest** - Ownership by two or more persons that gives each the right to use the entire property.

• **Tenants in common** - The shared ownership of a single property among two or more persons. The interests need not be equal and no right of survivorship exists.

• **Joint tenancy** - A form of property co-ownership that features the right of survivorship.

• **Right of survivorship** - A feature of joint tenancy whereby the surviving tenant or joint tenants automatically acquire all the right, title, and interest of the deceased joint tenant.

• **Partition** - To divide co-owned property into distinct portions so that each co-owner may hold his or her proportionate share separately.

**Prospectus** - A disclosure statement that describes an investment opportunity.

**Property types** - Below are definitions of various classifications of property.

• **Chattel** - An article of personal property (both personal and movable).

• **Personal property** - A right or interest in things of a temporary or movable nature. Anything not classed as real property.

• **Real property** - Ownership rights in land and its improvements.

**Receiver** - An impartial person appointed by the court to receive and preserve the property or funds in litigation for the protection of all persons concerned.

**Re-conveyance** - The return to the borrower of legal title, usually upon repayment of the debt against the property.

**Redemption** - A repurchase. The buying back of one's property after it has been lost or sold. The right to free the collateral from any lien or encumbrance and regain absolute title by payment of the amount due.

- **Statutory redemption** - The right of a borrower after a foreclosure sale to reclaim property by repaying the defaulted loan.

**Regulation Z** - A federal law requiring lenders to show borrowers how much they are paying for credit (Truth and Lending Act).

**Security agreement** - An agreement between a borrower and a lender which gives a security interest to the lender in property owned by the borrower. It specifies what property the lender is entitled to take if the loan is not repaid.

- **Attachment** - When the security agreement becomes enforceable against the debtor with respect to the collateral.

**Security interest** - A contractual interest in personal property or fixtures which secures payment or performance of an obligation. The property may either be in the possession of the creditor, or of the debtor. If in the possession of the debtor, the creditor's security interest is obtained by a signed security agreement giving the creditor rights in the property.

- **Collateral** - The property which is subject to a security interest (that pledged as security for satisfaction of a debt).
- **Filing** - The process whereby a creditor perfects a security interest in property by giving public notice/record of their interest.
- **Financing statement** - A document which is filed to perfect a security interest and thus becomes public record. It is done when filing is required or elected in order to perfect.

- **Perfection** - Perfection occurs when the secured party's security interest is protected from third parties claiming or seeking to claim an interest in the collateral. This can occur by filing a financing statement (or security agreement as a financing statement) in the appropriate place, or by taking possession of the collateral.

- **Priority** - The relative property rights in collateral among competing secured parties, lien creditors, and buyers or purchasers. Generally, priorities are created to permit payment, where funds exist, to certain special classes of creditors. They are to be paid before other classes by a fixed descending order.

- **Secured party** - The party who has a security interest.

- **Set-off** - The right by which a creditor can take money received by the debtor in another transaction to reduce the outstanding debt. A security agreement may provide that a financial institution can use other assets of a borrower, such as bank deposits, to set off unpaid debt that is in default.

**Statute of limitations** - A legal limit on the amount of time one has to seek the aid of a court in obtaining justice.

**Strict liability** - Damages resulting from extra hazardous activities (in product liability) must be paid if others suffer as a result. Negligence is not a factor.

**Title** - The right to or ownership of something. The evidence of ownership.

- **Abstract of title** - A summary of all recorded documents affecting title to a given parcel of land.

- **Bill of sale** - A document that shows the transfer of personal property from seller to buyer.

- **Chain of title** - The linkage of property ownership that connects the present owner to the original source of title.
  - **Cloud on the title** - Any claim, lien, or encumbrance that impairs title to property.
  - **Color of title** - Some plausible but not completely clear-cut identification of ownership rights.
  - **Deed** - A written document that, when properly executed and delivered, conveys title to real property.
  - **Encumbrance** - Any impediment to a clear title such as a lien, lease, or easement.
  - **Equitable title** - The right to demand that title be conveyed upon payment of the purchase price.
  - **Land patent** - A government document used for conveying public lands in fee to the first owner.
  - **Marketable title** - Title that is free from encumbrances and any reasonable doubt as to who the owner is. Title can readily be sold or mortgaged.
  - **Naked title** - Title that lacks the usual rights and privileges of ownership.
  - **Opinion of title** - An attorney's opinion as to the status of the title.
  - **Quiet title suit** - A court ordered hearing held to determine land ownership.
  - **Title by descent** - Laws that direct how a deceased's assets shall be divided to heirs when there is no will.
  - **Title by prescription** - Acquisition of real property through prolonged and unauthorized occupation.
  - **Title insurance** - An insurance policy against defects in title.
  - **Title report** - A statement of the current condition of title.
  - **Title search** - An inspection of publicly available records and documents to determine the current ownership and title condition for a property.
- Tort** - A private or civil act, other than a breach of contract resulting in compensable injury or damage.
- **Tort law** - A generalized set of rules creating standards of conduct. It is based on the premise that a duty is owed to those with whom we come in contact and a breach of that duty could result in liability.
  - **Intended torts** - Intended invasions of personal security (assault, battery, false imprisonment).
  - **Privileged torts** - Privileged invasions of personal security (self-defense, defense of property, citizen's arrest, and reclamation of property).
- Trust** - Ownership held by a trustee for the benefit of another.
- **Fiduciary** - A person in a position of trust, responsibility, and confidence for another.
  - **Trustee** - One who holds property in trust for another.
  - **Trust corpus** - The subject matter of the trust. Definite and ascertainable property that is transferred to the trustee.
  - **Family estate (pure) trusts** - Proponents of these trust often promise that family trusts will solve all of an individual's estate planning problems. They should be approached with caution.
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- **Generation skipping trusts** - Trusts that are used to provide income to a generation or two of heirs with the property eventually passing to individuals two or three generations down the line.

- **Inter vivos trust (living trust)** - A trust that takes effect during the life of its creator. However, the trust may continue after death.

- **Irrevocable living trust** - The grantor cannot amend, revoke, or alter the trust. These trusts may save estate settlement costs and death taxes.

- **Revocable living trust** - The grantor retains the power or right to amend, revoke, or alter the trust. These trusts may save estate settlement costs but do not save death taxes.

- **Testamentary trust** - A trust that often takes effect at death. Its purpose is to provide for the management of property after death. These trusts save neither estate settlement costs nor death taxes but are often part of a plan to reduce death taxes. They are often contained in an individual's will.

**Usury** - An unlawful amount of interest. The lending of money at a rate of interest in excess of the maximum rate allowed by law.

**Vendee** - A purchaser or buyer of property. A person to whom anything is sold.

**Vendor** - A person who sells property to a vendee.

**Waive** - To surrender or give up (i.e. waiving rights or remedies).

**Will** - A legal document directing the disposal of one's property after death.

- **Codicil** - A written supplement or amendment to modify an existing will.

- **Holographic will** - One that is entirely hand written and signed by the testator but not witnessed.

- **Nuncupative will** - A will made orally.

- **Intestate** - To die without a last will and testament.

- **Intestate succession** - Laws that direct how a deceased's assets shall be divided when there is no will.

- **Testate** - To die with a last will and testament.

- **Testator** - A person who makes a will (masculine), testatrix (feminine).

**Writ of execution** - A court document directing the county sheriff to seize and sell a debtor's property.

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The definitions were taken, in part, from the following sources:

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