

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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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.

Damien Abbott

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.)

A

a fortiori^(Lat) ‘Much more’; ‘by or with stronger reason’.

à prendre See **profit à prendre**.

a priori^(Lat) ‘From before’. As deduced by reasoning from the general to the particular or from cause to effect.

AAA rating See **triple A rating**.

ab extra^(Lat) ‘From without’; ‘from outside’. See **contract**.

ab initio^(Lat) ‘From the beginning’. See also **adverse possession**, **rescission**, **trespass**, **void contract**.

ab intestato^(Lat) ‘From an intestate’, i.e. succession to property from a person who has left no will. See **intestacy**.

abandonee One who takes over the right to a property that has been abandoned. See also **abandonment**.

abandoned property Property that has been voluntarily surrendered or vacated, or to which title has been relinquished, without any intention of reclaiming it or transferring it to another. See also **escheat**, **abandonment**, **res nullius**, **treasure trove**, **vacant**.

abandonment 1. The act of giving up or proscribing completely. Yielding, ceding or giving up totally, especially ceding permanent control to another. 2. The voluntary relinquishment or surrender of property without any intention of resuming enjoyment or possession, or of vesting it in anyone else. The disclaiming of a right, expressly or by implication, without leaving any evidence of an intention to reclaim that right. Abandonment is

a voluntary and wilful act and may thus be distinguished from **eviction** and **forfeiture** either of which can arise as a result of either an illegal act or an omission.

The ownership of a **fee** title to land may be given away or sold, and it may be lost by the **adverse possession**; but it cannot be abandoned. Simply not using an **easement** does not of itself constitute abandonment. There must be a clear intention to abandon, or an overt act that is repugnant to the right of user (*Swan v Sinclair* [1924] 1 Ch 254, 266, aff'd [1925] AC 227 (HL)); 28A C.J.S., Easements, § 126). A **lease** cannot be abandoned unilaterally during its term. However, if a tenant leaves the premises that are leased to him empty, or demonstrates a manifest intention not to occupy the premises, and then permits the landlord to re-enter (or, more precisely, the tenant has offered, and the landlord has accepted a **surrender** of the possession), a tenancy may be said to have been abandoned. cf. **laches**, **repudiation**. See also **constructive eviction**, **escheat**, **estoppel**, **frustration**, **lapsed land**^(US), **release**, **res nullius**. 3. The discontinuance of a use of land for a considerable period of time, especially a **non-conforming use**, so that the use may not legally be resumed.

In English planning law, the abandonment of a use produces the result that the resumption of that use may constitute **development** and, therefore, requires planning permission. In this connection factors to be considered are: (i) the condition of the property; (ii) the period of time for which the use is discontinued; (iii) whether there is any intention to re-establish the discontinued use, which may be judged from the state of the property or any elected action on the part of the party seeking to re-establish the use; and (iv) any intervening user (*Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment* [1985] AC 132, [1984] 2 All ER 358 (HL); *Hughes v Secretary of State for the Environment, Transport and the Regions* [2000] JPL 826, (2000) The Times, February 18 (CA). See also **completion notice**^(Eng). 4. The act of relinquishing damaged property or salvage to an insurer with the aim of claiming a total loss. See also **subrogation**.

substituted agreement or **consent** thereto, and 'satisfaction' is the consideration, or that which is given, to support that agreement. Accord and satisfaction create a new contract with new consideration in substitution for the old contract. The creation of the new contract completely discharges the original. However, the payment of a sum of money that is less than the full amount due to a creditor is not of itself sufficient consideration to prevent the creditor from pursuing a later claim for the full debt; payment of a lesser sum can be no satisfaction for a greater sum (*Pinnel's Case* (1602) 5 Co Rep 117a, 77 Eng Rep 237). The substituted consideration may be small or unusual, but it may still be adequate to support a claim that the obligation has been discharged, for the creditor may have a special reason to accept that which is proffered: "the gift of a horse, hawk or robe etc., in satisfaction is good, for it shall be intended that a horse, hawk, or robe etc., might be more beneficial to the plaintiff than the money, in respect of some circumstance, or otherwise the plaintiff would not have accepted it in satisfaction", *Foakes v Beer* (1884) 9 App Cas 605, 616 (HL), per Lord Blackburn quoting Lord Coke. "The American decisions that accord with *Foakes v Beer* are innumerable ..." although "in some states the contrary rule has been adopted by statute, either providing that the payment of an overdue debt shall operate as full satisfaction if accepted by the creditor, or that it shall so operate if the creditor gives a full receipt or other written acknowledgment of full satisfaction", 6 *Corbin on Contracts* (1993-), § 1281. There must be a proper assent to support the accord and satisfaction of the parties, which cannot be achieved by a mere pretence of a bargain, by a gratuitous promise, or by **duress** or **undue influence**. cf. **novation**, **rescission**.

accountant's rate of return See **average annual return**.

accounting net yield The net rate of interest received by an investor from a securitized

loan, i.e. the return after the fees paid to the loan servicer.

accounts method of valuation See **profits method of valuation**.

accretion 1. The gradual, slow and imperceptible increase to an area of land as a result of natural causes, as by alluvial deposits left by changes in the course of a river or stream. Accretion can be caused by **alluvion** – the washing up of mud, silt, sand or sediment in such a way as to create new *terra firma*; **dereliction** – retreat of the water below its normal level; **reliction** – a permanent but gradual withdrawal or recession of the water-level. (Strictly speaking, the term 'accretion' signifies the process and alluvion is the material deposited, although the words are used synonymously and the word 'dereliction' is more generally used than reliction for the lowering of the water level or a change in the course of a river.) Land created by the natural process of accretion normally belongs to the owner of the land to which it is annexed; the boundary in the center of a river or stream being adjusted accordingly, even though the original boundary may still be ascertainable (*Southern Center of Theosophy Inc. v State of South Australia* [1982] AC 706, 716, [1982] 1 All ER 238 (PC); *Jefferis v. East Omaha Land Co.*, 134 US 178, 10 S Ct 518, 33 L Ed 873 (1890)). cf. **avulsion**. See also **accession**, **riparian rights**. 2. An addition to value or a loan over time; an increase in a sum of money or a fund by the addition of interest. Also called an 'accrual'. In particular, an increase in the amount of principal owed under a loan when the actual interest paid is less than the face rate on a note or bond. 3. An increase in the value of an asset over time, especially by an external addition. cf. **depreciation**. 4. The increase in an inheritance or legacy arising when a co-heir, or joint legatee, dies. 5.^(Scot)The perfection of a title to property as a result of the perfection of the title held by a predecessor in title. Thus, in the event that a party who has conveyed land to which he does not have a perfect title subsequently acquires that title, there is no need for a new conveyance.

term used especially to refer to the rent payable at the start of the lease, being the rent payable before any increase due to **operating expense** escalations. See also **escalation clause**. **3.** The initial rent payable under a lease that provides for an **indexed rent** and is used as the point of reference for calculating the indexation increases.

base right^(Scot) A subordinate right.

base services^(Eng) See **villeinage**.

base tenure See **base fee**.

base year^(US) The year fixed in a commercial lease as the reference point for the operation of an **escalation clause**, generally being the start year of the lease. In most commercial leases, an increase in operating expenses or real estate taxes over and above that established at the base year may be recharged to the tenant. Thus, if expenses are \$8 per sq. ft. in 2004 (the base year) and \$8.50 per sq. ft. in 2005, the tenant pays \$0.5 per sq. ft. as expenses in 2004. The amount of expenses in the base year may be referred to as the ‘expense stop’, being the level above which the expenses are passed through to the tenant. See also **full service lease**.

basement **1.** The substructure or pedestal of a building. In particular, a part of a building of full storey height that is wholly or substantially below ground level or the finished grade of a building. A basement floor is normally wholly below ground level, but in most building regulations a storey that has more than half its height below ground is considered as a basement. cf. **cellar**. See also **sub-basement**, **superstructure**. **2.**^(US) “The interior at ground level in a **basement house** or in a building having a basement facade”, *Webster’s Third New International Dictionary*[®], *Unabridged*, © 1993.

basement house^(AmE) A dwelling in which the principal sitting rooms are at least one storey above ground level, with the main entrance reached directly from ground level or one storey above ground level and reached by steps. The area

of the building at ground level that is normally used for storage or as a garage.

basic capitalization rate^(AmE) See **basic rate**.

basic rate^(AmE) **1.** A term used in the **mortgage-equity capitalization technique** for the capitalization rate that is applied when no allowance is made for mortgage amortization (i.e. for capital repayments), or for equity build-up (i.e. for projected changes in capital value). **2.** The rate of return on equity, before any allowance is made for the repayment or recapture of capital, and before capital appreciation (or depreciation) is brought into account; as distinguished from the **overall capitalization rate** which allows for capital repayments and equity build-up (or the loss of equity value). **3.** See **band-of-investment rate**. **4.** See **safe rate**.

basic rent See **base rent**.

basis^(US) The cost of a property as used when assessing a liability to tax on a sale or taxable exchange of that property. The ordinary ‘basis’ is usually the original cost to the taxpayer (which may include assumed liabilities). This cost may then be ‘adjusted’ by adding the cost of capital improvements (plus permitted carrying costs and assessments) and deducting any allowed or allowable depreciation (26 USC, Internal Revenue Code, §§ 1011, 1012). In addition, in the case of a residence, this basis is reduced by any untaxed gain that has been carried over from the sale of a former residence. Capital gains tax is payable on the difference between the net proceeds of sale (or **adjusted sale price**), taking account of any property received in exchange, and the ‘adjusted basis’. See also **book value**.

basis point One hundredth of a point, i.e. 1/100 of one per cent. An increase in an interest rate from 7% to 7.5% is an increase of 50 basis points. See also **point**.

particular, a lease granted to a tenant who intends to use a property for his own purposes, as compared with a building lease, or a lease granted to a person who intends to grant a sub-lease and derive income therefrom. ‘Occupational lease’ and **occupation lease** may be used interchangeably, although the latter term more usually refers to a lease granted to a tenant who intends to use the property in conjunction with his or her employment or trade. Also called a ‘space lease’. See also **business tenancy**, **occupation**, **proprietary lease**.

occupied See **occupation**, **occupier**.

occupier 1. A person who has a right to take or maintain possession of property without necessarily having an estate interest or claim to the property. One who takes and retains **possession** of property. One who has **occupation** or occupies land or buildings, which generally includes one who has a right to occupy land or buildings. ‘Occupier’ is a term of imprecise meaning. In common usage, an occupier is someone who is living in a property or has use of it for a business or similar purpose, especially someone who uses a property on a more than transient basis. In law, it may mean any person who has a right to exercise control over a property, even if he does not physically exercise that right.

In English law, in connection with a **duty of care** owed to a **visitor** to a property, it was said by Lord Denning that “wherever a person has a sufficient degree of control over premises that he ought to realise that any failure on his part to use care may result in injury to a person coming lawfully there, then he is an ‘occupier’”, *Wheat v E. Lacon and Co Ltd* [1966] AC 552, 578 (HL). Thus, in certain cases a managing agent may be considered as the ‘occupier’ of a property.

In the US, the occupier of a property is more commonly called an **occupant**, especially in the context of one who takes possession under some right or claim. cf. **trespasser**. See also **rateable occupation**, **residential occupier**^(Eng), **squatter**.

2. One who follows or carries on a particular **occupation**; a trader or dealer.

occupier’s liability See **negligence**, **visitor**.

occupy See **occupancy**.

occupying claimant’s acts^(US) See **mistaken improver**.

off-balance-sheet lease See **synthetic lease**.

off-going crop See **way-going crops**.

off-license^(BrE) See **licensed premises**.

off-shore company (bank or trust) A company (bank or trust) that has established its place of registration in a country that is not where it conducts its principal business or derives most of its income. In particular, an ‘off-shore’ country, that has low rates of taxation and, in some cases, limited legal regulation. Normally an off-shore company (bank or trust) conducts business in different parts of the world to its place of registration, but aims to be subject to the taxes, if any, and regulation by the ‘off-shore’ country only. If the principal activity of the company (or trust) is in a particular ‘on-shore’ country, or the shareholders (or beneficiaries) are resident in an ‘on-shore’ country, then that country will claim, especially for taxation purposes, that the company (or trust) is not ‘off-shore’ but should be liable to the appropriate fiscal and legislative policy of the ‘on-shore’ country. See also **tax haven**.

off-site cost A cost incurred in developing land that is not directly related to the site itself, such as the cost of providing access across an adjoining site or a contribution to the cost of utilities (water, electricity, gas or sewage) that serve several sites.**off-plan** See **sale off-plan**.

off the plan^(Aus) See **sale off-plan**.

offer 1. To declare a willingness to enter into

a **bargain**. 2. A proposal to do something. A proposal put forward voluntarily by one party for **acceptance** or **rejection** by another. A proposition by one party (offeror) that, if unconditionally accepted by another (offeree), constitutes an agreement. An offer, to be capable of forming the subject matter of a **contract**, must be certain in all its terms; it must amount to more than an indication that something is available for sale or a mere indication of a price at which an item can be acquired; and there must be a clear intention on the part of the offeror to be bound by an acceptance of that offer. A request for an offer to be made or for someone to make a bid (as made by an auctioneer or when soliciting prices for work to be carried out) is not an offer (*Payne v Cave* (1789) 3 Term Rep 148, 100 Eng Rep 502; *United States v. Daniels*, 231 US 218, 34 S Ct 84, 58 L Ed 191 (1913)).

An offer may be withdrawn at any time until it is accepted unconditionally, but an offer remains capable of acceptance until the offeree is made aware of its withdrawal. If no period is stipulated within which an offer may be accepted, and it is not expressly withdrawn, a ‘reasonable’ time is allowed within which acceptance may be effected. An offer sent by mail (unlike an acceptance sent by mail) is not effective until it reaches the other party. A conditional offer is not accepted unless all of the conditions attaching to the offer are accepted. An acceptance that is subject to a variation in a condition of the offer constitutes a **counter offer**; that is, it creates a new offer that, in turn, must be accepted to create an agreement. cf. **invitation to trade**^(AmE)/**invitation to treat**^(BrE), **promise**. See also **bid**, **general offer**, **lapse**, **quotation**, **repudiation**, **revocation**, **specific performance**, **subject to contract**, **tender**.

offer and acceptance See **contract**.

offer price See **asking price**.

offer to sell See **invitation to trade**^(AmE)/**invitation to treat**^(BrE).

offeree A person who receives an **offer**. See also **optionee**.

offering sheet A one-page summary of the principal terms of a mortgage that is offered to investors in the secondary mortgage market.

offeror A person who makes an **offer**. See also **optionor**.

office Derived from the Latin *officium*, ‘perform a task’ or *opus*, ‘work’. A place where people work or are employed to work, but not for the purpose of manufacture, retail or similar activities. A place where a person or groups of people place desks, tables, computers, filing, storage cabinets and similar items in order to carry out predominately management, administrative or clerical work. Premises used primarily for administering the affairs of a business, profession, government, industry, service entity or any similar organisation, whether conducted by a commercial or non-profit enterprise.

Under English planning law, ‘office’ refers to a building where people work in management, administration, etc. but does not include premises that are more in the nature of retail premises, such as a building society or estate agents office where the general public are regular visitors. For the purpose of English statutory provisions relating to the health, safety and welfare of persons employed to work in “office premises”, ‘office’ means a building or part of a building, used for office purposes, and office purposes include “the purposes of administration, clerical work, handling money and telephone and telegraph operating”, Offices, Shops and Railway Premises Act 1963, s. 1(2)(a)(b). This statute (as amended by the Health and Safety at Work, etc., Act 1974 and ministerial orders made thereunder) provides that office premises, where persons are employed, are, *inter alia*, to be kept clean, ventilated and properly lit, maintained at a reasonable temperature during working hours, and provided with proper washing and sanitary facilities, as well as first-aid facilities.

by someone in their own right and not derived or held by virtue of another's right to possession, especially possession held by an owner as distinguished from possession as held by a tenant. cf. **derivative possession**.

paramount title A title that is superior to another. A stronger or better title to that claimed in opposition thereto. **Eviction** can arise 'by title paramount' when a landlord who has a superior title to the immediate landlord takes action to dispossess the under-tenant. The term is sometimes used merely to refer to a title that is better or stronger than another. cf. **derivative title**.

parcel of land 1. A specified area, or **plot** of land, usually in single ownership. A **contiguous** area of land held in the possession of one party, especially a claimant to compensation for the expropriation of such land (United States v. Easements and Rights over Certain Land, 259 F Supp 377, 382 (1966)). A continuous tract or plot of land held in the same ownership and not separated by any intervening land in another ownership. See also **hereditament**, **lot**. 2. An area of land that has been subdivided as a part of a larger estate or tract of land. 3. A **section of land**, or a half, or a quarter section (*Ost v Turnbull* (1977) 81 DLR (3d) 161 (Can)). Any contiguous sections or parts thereof, as distinguished from a **tract** which is an area of land of indefinite extent.

parcel identification See **grantor-grantee index**^(US), **index map**^(Eng), **lot and block system**^(US), **plat book**, **plot plan**, **tract index**^(US).

parceling^(AmE) or **parcelling**^(BrE) The act of dividing land into separate plots for sale or development. cf. **assemblage**, **plottage**. See also **plat**.

parcella terrae^(Lat) A 'parcel of land'.

parcels clause The section of a **deed** or **conveyance** that describes the subject property. The parcels clause generally starts with the words "All that ..." and then describes the property by

reference to an address or by reference to a **plan**.

A description of a property by reference to a precise verbal description of the boundaries and appropriate land marks (i.e. metes and bounds) is satisfactory if based on a formal survey of the land; but a description solely by name, address, or by a mere statement of a land area tends to be too vague or uncertain. A description of a parcel of land by reference to a plan is good, provided the plan is to an adequate scale, and has been prepared and clearly marked for the purpose. However, a mixed form of description may be disastrous: "as long as only one species of description is resorted to in describing parcels, no harm is done ... If, however, several species of description are adopted, risk of uncertainty at once arises, for if one is full, accurate, and adequate, any others are otiose if right, and misleading if wrong", *Eastwood v Ashton* [1915] AC 900, 915-916 (HL) (*Scarfe v Adams* [1981] 1 All ER 843 (CA)). See also **exceptions and reservations**, **description**, **general words**, **premises clause**.

Parcels Index^(Eng) An index of every parcel of land as registered at the **Land Registry** (Land Registration Rules 1925, r. 8). This index shows the number by which various parcels of registered land are referenced on the **General Map**, the title number for each registered parcel, and the number of any registered caution or priority notice that affects a parcel of land (Land Registration Rules 1925, r. 274).

parcenary See **coparcenary**.

pari passu^(Lat) 'With equal step'; 'without preference'; 'at the same rate'; 'equally'.

parish 1. An area that falls within an administrative boundary of the established church; "the ecclesiastical unit of area committed to one pastor ...", *Webster's Third New International Dictionary*[®], *Unabridged*, © 1993. 2.^(Eng)The smallest area of local government, having been originally an ecclesiastical parish. 3.^(US)In Louisiana, the smallest civil division of the state, corresponding to a county in other states.

‘contingency reserve’ or, in the US, a ‘retainage’, ‘retained percentage’ or ‘holdback’. See also **certificate of completion**^(US), **certificate of practical completion**^(BrE), **defects liability period**.

retentive lien See **lien**.

return of capital See **internal rate of return**, **recapture**.

return on capital See **rate of return**, **recapture**, **yield**.

return on equity See **cash-on-cash return**, **earnings yield**.

return on investment (ROI) See **rate of return**.

revaluation 1. The making of a new assessment of the value of a property by the same valuer or appraisal organization. A revaluation connotes an existing **valuation**, and a revaluation means a new estimation of the same property, usually at a later date to the original valuation. The updated value may be obtained, for example, for incorporation in a company’s balance sheet; for taxation purposes (especially for local property taxation); or to induce a lender to provide additional finance by using the new value as security for a higher, or new, loan. Also called, especially in the US, **reappraisal**. See also **reassessment**. 2.^(Eng)The reassessment of the **rateable value** of all properties for the purpose of the levying of the **Uniform Business Rate**, which is to be carried out every five years.

revaluation clause^(US) A clause in a lease that provides for a reassessment of the rent to market value at specified intervals. Also called a ‘reassessment clause’. See also **escalation clause**, **rent review clause**^(BrE).

revaluation equity An increase in the **equity** of a property that arises as a result of a revaluation.

revaluation lease A lease that provides for the rent to be revised during the term by means of a revaluation carried out by an independent appraiser or valuer. ‘Revaluation lease’ may refer to a lease that contains a provision for the rent to be revised by reference to the **market rent** of the leased premises, or by reference to an agreed percentage of the reassessed capital value of the premises. See also **reappraisal lease**^(US), **rent review clause**^(BrE), **percentage lease**.

revaluation reserve An amount, set out in the financial statement or balance sheet of a company, that represents an increase in the value of a property following a **revaluation**.

revenue That which comes back. The gross receipts of a business or enterprise. Income that is received back as a result of an investment. The total return from any form of property. The annual rents, profits, interest or other issues from property. In particular, investment income as distinguished from wages or salaries. See also **gross income**, **profit**, **yield**.

revenue stamp A stamp that is affixed to a document as evidence that a tax has been paid. In the US, prior to 1968, a federal revenue tax was payable on transfers of real property. This tax has now been abolished, but several states now levy a **stamp tax** on similar transactions. See also **stamp duty**^(Eng).

reverse annuity mortgage (RAM) An arrangement by which a capital sum is advanced based on a mortgage secured on the equity value of a person’s home and the proceeds are used to purchase an **annuity** to pay interest (and possibly some amortisation of capital) on the loan and to provide an income for the home owner for a specified period of time or, more usually, for the life of the borrower. The mortgage debt may be repaid during or at the end of its term, as with any other loan, by a sale of the property or a refinancing, or on the death of the borrower, by a sale of the property, or

Administration. Lenders designated by the VA may make home loans (including loans for the purchase of a townhouse or condominium in a VA-approved project and mobile homes) to eligible veterans upon terms that are more favorable than those that are available to other borrowers. For example, the veteran may be able to obtain loans that are granted (a) without the need for a down payment; (b) up to 100% of the VA-established reasonable value (although loans are generally limited to \$203,000); (c) at or below market interest rates, for up to 30 years, with a choice of principal repayment plans; (d) as assumable loans; (e) without any penalty on repayment of the principal; (f) without any mortgage insurance premium to pay; or (g) the veteran may be able to pay lower closing costs on the cost of the loan. See also **no bid**. (www.va.gov/vas/loan).

vi, clam, precario^(Lat) See *nec vi, nec clam, nec precario*.

vi et armis^(Lat) ‘By force of arms’. See **trespass**.

viability study See **feasibility analysis**.

vicarious liability or vicarious responsibility An indirect legal liability. A liability for the acts of another. The liability for a **tort** committed by another, even though the person made liable is not the direct cause or is not a party to the tort. Vicarious liability may arise: (a) where there is a relationship between the parties that is sufficient to justify the imposition of the liability; and (b) the tort can be related to that relationship. For example, vicarious liability may well arise from the relationship of employer (or master) and an employee (or servant) because the servant’s acts, when carried out as part of his duties of employment, are considered as the acts of the master – *qui facit per alium facit per se*. (The employee may be liable also for his acts, but a wronged person may prefer to claim against the employer, or against both parties.) A person is liable for the tort of another if the former is able to control the method by which the latter performs

his duties; but, in general, there is no similar liability for the acts of an **independent contractor**, provided the contractor is left free to control and direct the manner in which he performs the job entrusted to him and the employer does not condone the contractor’s deficiencies (The American Law Institute, *Restatement Second, Torts* § 409 (1965); *D & F Estates Ltd v The Church Commissioners for England* [1989] AC 177 (HL)). A similar liability may arise between a **principal** and his **agent**, the principal being liable if a relationship akin to master and servant exists, as where the agent is acting under strict instruction or authorisation; but not, as a rule, if the relationship is that of employer and independent contractor and the agent is not controlled as to how he exercises his duties, or if the agent is acting (expressly, apparently or ostensibly) outside his authority (*Lloyd v Grace, Smith & Co* [1912] AC 716 (HL); The American Law Institute, *Restatement Second, Agency* § 220 (1958)). A **partnership** may be vicariously liable for the acts of one of its partners when that partner is acting in the ordinary course of the business of the firm. In the US, sometimes called ‘imputed liability’.

vicarious performance 1. The performance of all or part of a contractual obligation by a person who is not a party to a contract, e.g. by a subcontractor. See also **main contractor**, **privity of contract**. 2. An action carried out by a company using a human or mechanical agent. A company, being an intangible entity, must act through a tangible body, i.e. it acts vicariously; and thus may be ‘vicariously liable’ for its actions. See also **vicarious liability**.

vice A defect or fault in something; an imperfection. See also **inherent defect**.

vicinage An adjoining area; part of a neighbourhood. In English law, a right *pur cause de vicinage* was a form of **profit à prendre**, being a **right of common** by which cattle that were rightfully on the common land of one manor were permitted to stray and feed on the unfenced

APPENDIX C

Capitalisation^(BrE) or Capitalization^(AmE)

Capitalisation for a limited period of time may be expressed by the formula:

$$C_v = \frac{a_1}{(1+r)} + \frac{a_2}{(1+r)^2} + \frac{a_3}{(1+r)^3} + \dots + \frac{a_n}{(1+r)^n}$$

Where:

C_v = the capital value

$a_1, a_2, a_3 \dots a_n$ = the income or cash flow receipts in each period of time.

r = capitalisation rate, expressed as a decimal

n = number of periods of time (or years)

When the income is constant, straight capitalisation produces a capital value = a/r , where a = income and r = capitalisation rate.

Internal Rate of Return

The rate of interest that discounts a series of future cash flows or income returns to make them equal to the total cost or outlay on the investment that generates those cash flows or income returns; the one rate of interest at which the **present value** of all expenditure on an investment equals the present value of all receipts from that investment (i.e. the discount rate when the **net present value** is zero). The internal rate of return may be calculated solving for r in the formula:

$$P_0 = \sum_{i=1}^{i=n} \frac{R_i}{(1+r)^i} + \frac{P_n}{(1+r)^n}$$

Where:

P_0 = initial cost

R_i = income during period i (or per annum), in arrears

P_n = value of reversion

or **redemption value** in period n (or the scrap value after n years)

n = number of periods (or years)

r = internal rate of return

Thus, if P_0 is the price paid for an investment, which produces a periodic (or annual) income in arrears of R_i for n periods (or years), and the investment is sold at the end of that period for P_n then the equivalent annual return over the life of the investment is r . Under this formula, it is assumed that all income received from the investment is reinvested during the term of the investment at the same rate. The rate calculation may be 'adjusted' by applying a lower or safer rate to the income received throughout the term of the investment.

APPENDIX D

ABBREVIATIONS & ACRONYMS

A

A	Atlantic Reporter (USA)
A.2d	Atlantic Reporter, Second Series, 1983-date (USA)
AAA rating	triple A rating
AACI	Accredited Appraiser Canadian Institute (see Appendix A)
AAR	Accredited in Appraisal Review (see Appendix A) average annual return
ABS	asset-backed security
a/c	air conditioning
AC	Law Reports, Appeal Cases, 1890-date ^(Eng)
(ACT)	Australian Capital Territory
ACRS	accelerated cost recovery system
ADC loan	acquisition, development and construction loan
Adm'r	Administrator
Admin.	Administrat[ive, ion]
ADR	alternative dispute resolution average daily room rate
AEA	Administration of Estates Act ^(Eng)
aff'd	affirmed
AFFO	adjusted funds from operations
A-G	Attorney-General
AGI	adjusted gross income
AHA	Agricultural Holding Act ^(Eng)
AI	all inclusive
AIA	American Institute of Architects (see Appendix A)
AIC	Appraisal Institute of Canada (see Appendix A)
AIREA	American Institute of Real Estate Appraisers (see Appendix A)
AIRR	adjusted internal rate of return
AITD	all-inclusive deed of trust
AJA	Administration of Justice Act ^(Eng)
Ala	Alabama; Alabama Supreme Court Reports