



A Real Estate Glossary for the Layperson –
Part Two

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When reading and understanding the issues set forth in a title report it is important to know the meanings of the terms used and the effect they have on title. As a continuation of last month's article, listed below are additional terms the layperson should be familiar with, as well as those in the real estate industry. As stated before, familiarity with the title "language" can be of immense benefit to those who deal within the industry, either on a regular or occasional basis:

Covenants and Restrictions: Covenants and restrictions are usually placed on the land as a vehicle to protect the quality and character of the land or development of the land. Most often it will originate from the original builder and will run with the land, affecting any successors in interests and their assigns. Some examples of restrictive covenants that may show on title are setback lines on filed maps (wherein the building must be built a specified number of feet from the front property line); limits as to how many floors a building may have; limits as to lowest sale price a property may be sold for; restrictions as to the use and occupancy of a building, such as prohibiting the use as a medical office or a warehouse, etc.); boundary line agreements in which two adjoining owners will enter into an agreement as to where the actual boundary line should be located between their respective properties; restrictions wherein the town where the property is located prohibits the destruction of trees, or in the alternative, prohibits the building up of certain portions of land to allow the natural preservation or aesthetic character of the property.

Easements/Right of Ways: Easements and right of ways are usually created in the form of grants that provide access to and from land. Unlike leases, easements do not give the holder a right of possession. Some easements are for the benefit of the utility companies that provide gas, electric or telephone power to the area, and may require access in and to the land for the repair and maintenance of underground wires and the placement of above ground utility poles. Other easements found in title are for railroads, sanitary sewer easements, and storm drain easements. Another common easement is a driveway easement that can either be a mutual easement between adjoining owners, or exclusively for the benefit of one owner. In instances where the property is landlocked one will often find an access easement providing ingress and egress over an adjoining parcel of land which fronts a public road. In certain cases where no such access easement exists the courts have found that an "easement of necessity" exists, in effect creating an easement to prevent the landlocked parcel of land from becoming useless or worthless. We should note that for an easement of necessity to be granted, the right claimed must be absolutely necessary. If the owner of the parcel seeking such relief has an alternative, albeit inconvenient or expensive, outlet to a public road, an easement of necessity will not be granted.

Often the title agent will be asked for "affirmative insurance" language in the policy being issued assuring the Insured that a particular covenant, restriction or easement has not been violated. In those cases it is absolutely necessary that we have an up to date and guaranteed survey of the property before including such coverage.

Building Loan Mortgage: This type of mortgage is prevalent when there will be construction on the property. This type of mortgage is funded in separate disbursements as the various phases of construction are completed. As each disbursement is approved, prior to funding we as a title agent will be required by the lender to provide a continuation of title and real estate taxes that will ascertain if new liens are found of record that might jeopardize the "first lien" position of the lender. A loan title policy issued for a building loan mortgage will contain a "pending

disbursement clause” which insures only to the extent of the amount actually disbursed, but increases as each disbursement is made and provides for continuations of the examination of title with each pending disbursement. It should be noted that prior to the recording of the Building Loan Mortgage, a Building Loan Agreement must be filed in the County Clerk’s office in the county where the property is located. In the absence of this filing, the priority position of the lender with regards to subsequent advances could be imperiled.

Credit Line Mortgages: Also known, as Equity Line Mortgages are mortgages that retain an open line of money to be used as needed by the borrower, subject to the maximum amount of the loan as defined in the mortgage and mortgage note. Title insurance premiums and mortgage recording tax paid are based upon the full amount of the loan. In New York State credit line mortgages for more than 3 million dollars on commercial property will be required to pay additional mortgage tax when advances and re-advances exceed the face amount of the mortgage. Needless to say one will rarely, if ever, see credit line mortgages in excess of 3 million dollars on commercial property.