



TERMS & DEFINITIONS



FARM, RANCH, AND REAL ESTATE

REAL ESTATE TERMS:

AMORTIZED LOAN: A loan that is paid off, both interest and principal, by regular payments that are equal or nearly equal.

AMENDMENT: A change, to alter, add to, or correct, part of an agreement without changing the idea or essence.

ANNUAL PERCENTAGE RATE (APR): This term reflects the cost of all credit and finances as determined by the length of a year, including the interest rate, points, broker fees, and other credit charges obligated to the borrower.

APPRAISAL: An estimate of value of property resulting from analysis of facts about the property; an opinion of value.

ASSUMPTION: Taking over another person's financial obligation; taking title to a property with the Buyer assuming liability for paying an existing note secured by a deed of trust against the property.

BENEFICIARY: The recipient of benefits, often from a deed of trust; usually the lender.

CLOSE OF ESCROW: The date the documents are recorded and title passes from Seller to Buyer. On this date, the Buyer becomes the legal owner, and title insurance becomes effective.

CLOSING COSTS: Closing costs may also be referred to as transaction costs or settlement costs and may include various fees and charges associated with finalization. These may include or be related to application fees, title examination, title insurance, property fees, as well as settlement documents and attorney charges.

CLOSING DISCLOSURE: A five-page form that provides final details about the mortgage loan you have selected. It includes the loan terms, your projected monthly payments, and how much you will pay in fees and other costs to get your mortgage (closing costs).

CLOUD ON TITLE: A claim, encumbrance, or condition that impairs the title to real property until disproved or eliminated through such means as a quitclaim deed or a quiet title legal action.

COMPARABLE SALES: Sales that have similar characteristics as the subject property, used analysis in the appraisal. Commonly called "comps."

THE RANCH TEAM

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CONSUMMATION: Occurs when the consumer or borrower becomes legally obligated to the creditor on the loan, not, for example, when the consumer becomes contractually obligated to a Seller on a real estate transaction.

CONVEYANCE: An instrument in writing, such as a deed used to transfer (convey) title to property from one person to another.

DEED OF TRUST: An instrument used in many states in place of a mortgage. A written instrument by which title to an interest in land is transferred by the trustor to a trustee for a loan or other obligation.

DEED RESTRICTIONS: Limitations in the deed to a property that dictate certain uses that may or may not be made of the property.

DOWN PAYMENT: Like many transactions involving large sums of money, the mortgage process involves a down payment - the amount a Buyer pays in order to make up the difference between the purchase price and the mortgage amount. Some experts advise no less than 10% to 15%; however, any amount over 20% of the purchase price is often recommended, and may be required to avoid having to pay private mortgage insurance (PMI).

DUE DILIGENCE: In nutshell, due diligence is doing your homework before making a purchase. When purchasing a ranch, it is essential that an in-depth investigation is done in order to ensure that you know exactly what you are purchasing. While this is true for any real estate transaction, it is extremely important when it comes to buying a ranch, farm or recreational tract of land. Whether it is an agricultural farm or ranch in Montana or Utah or a recreational hunting ranch in Wyoming, there are checklists and protocols that should be followed in order to cover all of your bases and eliminate surprises after the purchase. Although every property is different, there are several items that should not be overlooked. Some of this information can be found in the title commitment, however it is always good to double check to confirm that the information provided is correct. Other items will need to be research on your own, through your real estate broker or through an attorney.

EARNEST MONEY DEPOSIT: Down payment made by a purchaser of real estate as evidence of good faith; a deposit or partial payment.

EASEMENT: A right, privilege, or interest limited to a specific purpose that one party has in the land of another. An easement is a right to use or cross another person's land for a specific purpose. Although this grants the legal right to use the property, the legal title to the land remains with the owner of the property. For example, a neighbor may be granted an easement to cross adjoining land to access the road. Although they cannot build or plant on the land, they may be required to help maintain the road or easement land. Easements are also granted to utility companies for the placement of utility poles, water lines and sewer lines. Buyers should be aware that easements can restrict what the buyer is allowed to do with a property.

ENCROACHMENT: An encroachment happens when a neighbor builds on an adjoining property without permission or an easement. Upon occasion, especially on a farm or ranch, a fence line will be built on a neighboring property, often due to an incorrect survey or an owner not knowing exactly where

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a property boundary line is located. Buildings or roads can also encroach on a property. An encroachment should show up on a title report.

HAZARD INSURANCE: Real estate insurance protecting against fire, some natural causes, vandalism, etc., depending upon the policy. Buyer often adds liability insurance and extended-coverage for personal property.

IMPOUNDS: A trust type of account established by lenders for the accumulation of borrower's funds to meet periodic payments of taxes, mortgage insurance premiums, and/or future insurance policy premiums, required to protect their security.

LEGAL DESCRIPTION: A property description, recognized by law, using a government rectangular survey, metes and bounds, or a plat map to sufficiently locate and identify a property.

LIEN: A form of encumbrance that usually makes a specific property the security for the payment of a debt or discharge of an obligation. For example, judgments, taxes, mortgages, deeds of trust. A lien, or encumbrance, is a legal claim of ownership listed on the title of a property. Upon obtaining a mortgage, your lender will have a lien on your property until your mortgage is paid off. A lien can be filed on a property by anyone, be it a utility company, a contractor, etc., that is owed money by an owner of a property. This lien could show up on a preliminary title report if you are in the process of buying a home, farm, ranch or land.

MULTIPLE LISTING SERVICE (MLS): The MLS is a database of properties listed for sale by REALTORS® who are members of the local Board of REALTORS®.

MORTGAGE: The instrument by which real property is pledged as security for repayment of a loan.

PRELIMINARY TITLE REPORT: The preliminary title report will indicate if anyone other than the seller has ownership or a legal claim on the property, as well as any liens, easements or encroachments on the property which could put a cloud on the title. Your real estate broker, attorney or the title company should be able to answer questions or provide information on your report.

PRINCIPAL, INTEREST, TAXES & INSURANCE (PITI): A payment that combines Principal, Interest, Taxes, and Insurance.

POWER OF ATTORNEY: A legal document that gives someone you choose the power to act in your place.

PRINCIPAL: The amount borrowed or remaining unpaid. The part of the monthly payment that reduces the remaining balance of a mortgage.

PRIVATE MORTGAGE INSURANCE (PMI): PMI is to protect the lender from possible default. It is typically required if a borrower puts a down payment that is less than 20% of the home's value. The charge is usually included in the monthly mortgage payment.

PRORATE: Used to describe the division of real estate expenses to the proportion of ownership or rental. At closing, any expenses that were prepaid by the Seller are prorated to his portion of ownership.

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PURCHASE AGREEMENT: The purchase contract between the Buyer and Seller, also known as a Purchase and Sale Agreement or a Buy/Sell Agreement. It is usually completed by the real estate agent and signed by the Buyer and Seller.

QUITCLAIM DEED: A deed operating as a release, intending to pass any title, interest, or claim which the grantor may have in the property, but not containing any warranty of a valid interest or title by the grantor.

RECORDING: Filing documents affecting real property with the County Recorder as a matter of public record.

TITLE: A title is a legal document listing the history of ownership of a property, whether a home, ranch, farm or land. After a property is under contract (the buyer and seller have reached mutual acceptance), an attorney or title company will provide a preliminary title report which will reveal any problems that might prevent the property from being legally sold. The results are written up for the buyer to review in a preliminary title report.

TITLE SEARCH: A title search is a detailed examination of the historical records concerning a property. These records include deeds, court records, property and name indexes, and many other documents. The purpose of the search is to verify the seller's right to transfer ownership, and to discover any claims, defects and other rights or burdens on the property.

TITLE INSURANCE: Title insurance is your policy of protection against loss if any of these problems even a "hidden hazard" results in a claim against your ownership.

VESTING: When a deed is recorded for real property, ownership is described using the name of the owner(s), and often a phrase which describes the legal relationship between multiple owners or married persons.

WARRANTY DEED: A real estate-oriented document used to convey fee title to real property from the grantor (usually the Seller) to the grantee (usually the Buyer). It includes warranty language from the Seller to the Buyer.

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RANCHING/AGRICULTURE TERMS:

ANIMAL UNIT (AU): A 1000 lb. (455kg) cow, either dry or with a calf up to six months of age, or the equivalent based on a standardized amount of forage consumed. Large herbivores usually consume between 2.0 and 3.0% (dry weight) of their body weight per day.

ANIMAL UNIT MONTH (AUM): The amount of forage consumed by an AU in 1 month. Equivalent to 915 lbs. dry weight forage (30lbs/day *30.5 days/month = 915 lbs.). You use AUMs to determine how many animals can graze the allotment for how many months (or weeks or days).

ANIMAL UNIT EQUIVALENT (AUE): The energy requirements of a particular kind or class of animal relative to one au: Cow with calf= 1 AU, yearling calf= 0.6 AU, Elk = 0.7 AU, Bull, Horse = 1.25 AU, Sheep, mule deer, pronghorn = 0.2 AU.

CARRYING CAPACITY: The maximum stocking rate possible without causing damage to vegetation or related resources (i.e., consistent with maintaining or improving range condition or related resources); Used synonymously with **GRAZING CAPACITY**.

PROPER USE: A degree of utilization of current year's growth which, if continued, will maintain or improve the long-term productivity of the site or achieve specific management objectives (e.g., improve range condition).

STOCKING DENSITY: The number of animals per unit area of land at any instant of time.

STOCKING RATE: The number of animals grazing or utilizing a unit area of land for a specified time period; e.g., AU/ac, AUM/ac, AUM/ha or reciprocal.

DRYLAND FARMING: Dryland farming is a type of farming that is used in arid and semi-arid areas without irrigation. The planting of drought-resistant crops and by utilizing moisture-enhancing techniques allows crops to grow without an additional water source. Planting seeds deep in the ground, using mulch to delay evaporation and crop rotation are just a few methods that are practiced. Different areas are better suited than others to grow certain crops. According to the Washington State University Publication Dryland Farming in the Northwestern United States: A Nontechnical Overview, "The northwestern states of Washington, Oregon, Idaho, Montana, Utah, and Wyoming, wheat and other drought-tolerant crops are raised on over 10 million acres of land using dryland farming techniques." With the climate continually changing, dryland farming will become increasingly important.

PHASE ONE REPORT: A Phase I Environmental Site Assessment is utilized to gather information regarding the environmental condition of a property and to identify actual or potential environmental contamination. This process protects both the buyer and the seller. The buyer will learn about any impact to the property value, and the seller will be protected from a possible claim which could occur after the sale has been finalized. In a farm or ranch acquisition, this is a very important step as often there is the use and/or storage of many potentially hazardous materials such as fertilizers, fuel or propane, as well as agricultural runoff, landfills, etc.

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PHYSICAL DESCRIPTION: The physical description of a ranch, farm or recreational property describes the physical attributes of the land. This can be a general description including rolling hillsides, crop land, timbered areas, forested areas, landscaped areas, rivers, streams, springs, lakes and ponds. It can also include more specific details regarding exact acreage of each classification of land.

OPERATIONAL DESCRIPTION: Operational description typically is more specific to agricultural operations of a farm or ranch. It includes detailed descriptions of how the ranch or farm land is utilized, information regarding the cow-calf operation including pasture rotation, weight gain and shipping dates. Irrigation systems are discussed in depth to provide information about pivot ground, flood irrigation, gravity-fed systems, etc.

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UNITS OF MEASUREMENT

ACRE-FOOT (AF): A measurement of volume of a flow of water over time. 1 AF = 325,851 gallons

CUBIC FEET PER SECOND (cfs): A measurement of water flow equal to 7.48 gallons per second.

MINER'S INCHES: Historical term for the rate of flow in a miner's sluice. Found in old court decrees.
40 MI = 1 cfs

GALLONS PER MINUTE (gpm): Unit of measurement used to quantify flow rates below 1 cfs.

HISTORY

The State of Montana owns the water within the state for the use of its people. Citizens do not own the water, but can possess a legal right to use the water within state guidelines. The water must be put to beneficial use. By law, a recorded water right is required for the majority of water uses to be valid, legal, and defensible against other water users. A water right protects the use of that water from other uses later in time, from unrecorded, illegal uses, or from others who exceed their rights. Montana water law is based on the prior appropriation doctrine: “first in time is first in right.” Priority is determined by date of first use—the earlier the priority date, the more senior the right. Senior surface water right holders can “call” junior rights to discontinue use if water is insufficient for all senior rights. If you have a senior right, you are more likely to receive your water during the times you use it.

STATEMENTS OF CLAIM FOR EXISTING WATER RIGHTS

Generally, the most senior rights. These “historic” or “pre-73” water rights have priority dates beginning at the date of the earliest settlement of Montana and ending at June 30, 1973. The Montana Water Use Act required the filing of these rights by April 30, 1982. Late filed claims were allowed until July 1, 1996, but the late claims cannot call any timely filed valid claims, any federal or Indian reserved water rights or a permit or reservation issued prior to July 1, 1993. As such, July 1, 1993 is the enforceable priority date for late filed claims. After July 1, 1996, no claims could be filed.

EXEMPT NOTICE

Claims for existing rights for livestock and individual domestic use based upon instream flow or ground water sources were exempt from the claim filing requirements. EXEMPT NOTICES could be voluntarily filed for such claims. The Montana Legislature has recently reopened the claim filing period for the exempt uses. Exempt Notices are active water rights, but the owner will not be able to enforce the priority date against other water users if a Statement of Claim is not filed prior to the issuance of the Final Decree in the applicable basin. The state established a system for obtaining water rights for new or additional water developments. All permits issued prior to the issuance of a final decree of existing water rights are provisional and the amount of the appropriation may be reduced, modified or revoked when the final decree is issued if it is determined that such action is necessary to protect historic water rights. No final decrees have been issued yet. Therefore, all post-73 water use permits are PROVISIONAL PERMITS.

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STOCK WATER PERMIT is a type of provisional permit. A stock water permit can only be filed for the use of water from a stock water pit or reservoir that has the storage capacity less than 15 acre-feet with an annual appropriation of less than 30 acre-feet per year, located on a nonperennial or ephemeral stream, and constructed on and accessible to a parcel of land 40 acres or larger and owned or under the control of the applicant.

CERTIFICATE OF GROUND WATER DEVELOPMENT represents the right to use water located beneath the ground surface. The water is typically diverted from the ground via a well, developed spring or a ground water pit. The total water used from the development cannot exceed 35 gpm or 10 acre-feet per year.

A WATER RESERVATION is a right to water reserved for an existing or future beneficial use. Water can only be reserved by the state, any political subdivision or agency of the state, or the United States or any agency of the United States. The water must be put to beneficial use within 20 years. The period can be extended for an additional 20 years.

CONSERVATION DISTRICT RECORD represents all or a portion of Conservation District's water reservation used by a person for agricultural purposes. The person must apply to the conservation district for the use.

RESERVED CLAIM is a water right filed in whole or in part within the boundaries of an Indian reservation. The water right is based in the language in the compact between the State and the Indian tribe. The claimed water right does not have to be perfected. The water is reserved for future use by the claimant.

IRRIGATION DISTRICT water rights were filed by federal projects, state projects, public service corporations, mutual irrigation companies, water companies, water user associations, municipal water companies, drainage districts, conservation districts and corporations and partnerships, trusts (with several rights) and individuals (with several rights). The intent of the form was that lengthy place of use descriptions would be listed only once for several rights. The form was not limited to irrigation districts but could be used by any claimant for any claimed purpose. Any parcel lying within the place of use of an irrigation district may have access to the use of water through a contract, ownership of shares or by paying a fee.

POWDER RIVER DECLARATION is a type of historic water right claim resulting from Montana's first attempt to determine existing rights. In the Powder River Basin, DNRC employees went out into the field to determine and record historic water use. After six years the completion of the basin was not in sight, so the Legislature enacted the claim filing procedure. Powder River Declarations represent the water rights derived from the six-year investigation.

TEMPORARY PERMIT means a permit to appropriate water granted pursuant to Title 85, chapter 2, part 3, MCA, for a specific period of time and with an automatic expiration date. The abstract includes the expiration date. Expired permits remain in the system.