

Commonly Used Real Estate Transaction Terms

The following terms are utilized frequently in real estate transactions that are not used in implementing other NRCS conservation programs. The definitions provided for this list of terms does not supersede definitions provided in the WRP manual or in the Department of Justice title standards, but is intended to clarify frequently used terms.

1. “Exceptions and clouds on title” refers to any evidence that the landowner is not in full control of the property to be encumbered by the Wetlands Restoration Program (WRP) easement or contract or that the property cannot be used for wetland restoration purposes. Exceptions and clouds on title can include mechanics’ liens, mortgages, judgments, divorce decrees, other conservation easements, hazardous waste risks, and squatters’ rights.
2. “Title search documents” refers to the summaries of information regarding the documents obtained by searching the land records, court dockets, and other public records. These summaries are contained in documents entitled “Preliminary Title Report,” “Title Commitment Binder,” “Title Abstract,” and the like.
3. “Underlying documents” refers to the individual documents listed in the title search documents summary that are obtained by searching the land records, court dockets, and other public records.
4. “Closing agent” refers to the person or entity preparing the title search document, providing the underlying documents, or handling the closing and legal transfer of title and ownership from the seller to the buyer. The closing agent is typically not an agent of either party, but simply the person entrusted to carry out all non-conflicting instructions from all parties. In WRP transactions, the closing agent is hired by NRCS and thus is consider a buyer’s agent. The closing agent may be a title company, escrow company, attorney, abstractor, etc.
5. “Closing” refers to the final exchange in the sale and purchase of real estate in which the deed is executed and delivered to the buyer. Depending on local practice, the closing is usually handled by a closing agent.
6. “Chain of title” refers to the succession of title ownership of real property from the present owner back to the original owner (often the Government) at some distant time. Chains of title include notations of deeds, judgments of distribution from estates, certificates of death of a joint tenant, foreclosures, judgments of quiet title (lawsuit to prove one’s right to property title), and other recorded transfers (conveyances) of title to real property.
7. “Lien” refers to a legal claim against an asset used to secure a loan or other debt that must be paid when the property is sold. A mortgage is a common type of lien.
8. “Lien priority” refers to the order in which a lien is paid from the proceeds of a sale of property. A first lien, such as one that is recorded in the land records earlier than another lien, is considered a higher priority than a second lien, thus leading to the phrase “first in time, first in right.” A subordination agreement changes this order of priorities.
9. “Mortgage” refers to a loan to finance the purchase of real estate, usually with specified payment periods and interest rates. The borrower (mortgagor) gives the lender (mortgagee) a lien on the property as collateral for the loan.

10. “Subordination agreement” refers to a legal agreement that establishes one debt or right in property as ranking behind another debt or right in the priority for collecting repayment from a debtor or execution of rights. The priority of debts or rights is extremely important if the debtor defaults on payments or declares bankruptcy. Thus, if a preexisting mortgage on property is not subordinated at the time of the WRP easement purchase, the mortgagee can sell the property in foreclosure and the buyer of the property will not be subject to the terms of the easement. This is why mortgages and similar liens that are found during the title review must **either** be paid, removed or subordinated prior to closing the WRP easement or executing the 30-year contract.