

DEFINITIONS

(Sept 1999)

3315

Abandonment (as related to Standard Form A-7, Agreement): An unilateral action accomplished by CDF's non-exercise of the rights conferred to it for a period as designated in the document, usually two years, and effective after the designated nonuse period. A notice of the action to each property owner is not mandated.

Access Right: The right of a landowner to have ingress and egress to and from his property.

Acknowledgment: A formal declaration before a duly authorized officer (e.g., a notary) by a person who has executed an instrument that such execution is his act and deed.

Agreement: The act of two or more persons who assent to a mutual and common purpose with a view to alter their rights and obligations.

Attorney in Fact: : One who is authorized to perform certain acts for another under power of attorney; power of attorney may be limited to a specific act or acts or may be general.

Chain of Title: A history of conveyances and encumbrances affecting the title from the time the original patent was granted, or as far back as records are available.

Cloud on a Title: An unsatisfied claim or encumbrance which, if valid, would affect or impair the title of the owner of a particular real estate, i.e., a lien, easement, or mortgage.

Co-existent Rights-of-Way: More than one type of right-of-way may occupy the same ground, but the right and use by the first or senior owner of title may not be interfered with by the subsequent or junior grant of title, nor may the property owner insert any claims adverse to the first or senior right-of-way.

Consideration: Anything of value given to induce entering into a contract; it may be money or personal services.

Covenant: Agreements written into deeds and other instruments promising performances or non-performances of certain acts or stipulating certain uses or non-uses of the property.

Deed: Written instrument, which, when properly executed and delivered, conveys title.

Document:: A legal instrument, such as deeds, agreements, letters, receipts, used to prove a fact.

Easement: A privilege to do a certain act on or to the detriment of another's property. An easement, unlike a license, creates an incorporeal interest in land. (Also see definition for Rights-of-Way).

Eminent Domain: The right of government to acquire property for necessary public or quasi-public use by condemnation.

Encumbrances: Anything which affects or limits the fee simple title to property, mortgages, easements, restrictions, and liens.

Engineer's Statement of Inspection: A report of visible evidence of land use, which is prepared following a field inspection of the land under consideration by one who is qualified to recognize evidence of easements, encroachments, and other uses of the land by persons other than the record owner. The foregoing is necessary to identify defects in title, which might prevent or severely restrict the planned use of the land or require permission from the owner of such a use-right, in addition to permission from the landowner. (See Section 3328.5)

Estate: The degree, quantity, nature, and extent of interest, which a person has in property.

Estate for Life: A freehold estate, which is not of inheritance, but rather held by the tenant for life, or the life or lives of one or more other persons as stated in the document.

Execute: To complete, to make, to perform, to do, especially signing and sealing; to execute a contract is to perform the contract, to follow out to the end, to complete.

Fee: An estate of inheritance in real property.

Fee Simple: See Fee.

Fee Simple Absolute: An estate in real property by which the owner has the greatest power over title.

Gift Deed: A deed for which consideration is love and affection and no material consideration.

Grantor, Grantee: A grantor is one who confers a right, i.e., a grant of easement, license or permit. A grantee is one to whom the grant is conveyed.

Infringing Uses: Rights that infringe upon a prior granted right. An easement for a telephone line does not preclude the owner from leasing his/her land for planting potatoes or grazing cattle (or similar use) because neither of these uses interferes with the operation of the previous uses. However, an owner may not grant an easement which is an infringing use, such as open ditch or railroad track to cross a state truck trail, without due consideration for the state's senior title.

Intestate: A person who dies having made no will.

Joint Tenancy: Joint ownership by two or more persons with right of survivorship; all joint tenants own equal interest and have equal rights in the property.

Judgment: Final determination of a court.

Legal Description: A description recognized by law.

Lessee: One who contracts to rent property under a lease contract.

Lessor: An owner who enters into a lease with a tenant.

License: A permission or authority to do a particular act or series of acts on the land of another without possessing any estate or interest therein. A license conveys only a

temporary privilege in the use of property and is usually revocable at the will of the licensor.

Licensor, Licensee: A licensor is one who grants a license; a licensee is one who is granted a license.

Limited Partnership: A partnership composed of some partners whose contributions and liabilities are limited.

Memorandum of Understanding (MOU): A joint statement of purpose and a listing of duties and/or responsibilities of the parties signing the memo. It does not provide for an exchange of funds or other consideration, but may involve cost to the signer(s). Used, generally, where two agencies are involved in a single project in which the functions of each are separate but coordinated.

Option: A right given for a consideration to purchase or lease a property upon specific terms and time.

Original: On printed or copied documents, unless otherwise specified, three copies must have original signatures and are thereafter accepted as original documents. CDF requires a minimum of three originals: one for the contracting party, one for CDF (Lands Unit, Sacramento), and one for DGS. Care should be used when pulling copies for pending files that an original copy is not used.

Original Document: The top typewritten, first impressed copy is called the "archetype original." If bearing the hand signed signatures of the parties to the contract, carbon copies or photocopies of the document become recordable true originals.

Owner of Record: The entity to whom the title was conveyed. This entity may or may not be identical to the owner as described in the tax roll.

P-Line: Preliminary survey line.

Parole Evidence Rule: Refers to prior oral or written negotiations or agreements of the parties, or even oral agreements contemporaneous with their written contract. The parole evidence rule prohibits the introduction of any extrinsic evidence (oral or written) to vary or add to the term of an integrated written instrument such as a deed, contract will, etc. This rule helps to finalize agreements with certainty, and it discourages fraudulent claims.

Partnership: The two kinds this section is most concerned with are the following:

- General Partnership. Any of the partners can obligate the others.
- Limited Partnership. Only the general partner has authority to obligate the others.

Patent: Governmental (State or Federal) conveyance of title to Public land.

Permit: A written license or warrant issued by a person in authority (permittor), empowering the permittee to do some act not forbidden by law, but not allowable without such authority.

Person: "Persons" can be natural or artificial. A natural person is a human being. Examples of artificial persons include a collection or succession of natural persons forming a corporation, such as in the case of the estate of a bankrupt or deceased person, such corporation being a collection of property to which the law attributes the capacity of having rights and duties. The latter class of artificial persons is recognized only to a limited extent in our law.

Power of Attorney: An instrument authorizing a person to act as an agent of the person granting such power. General Power of Attorney has general powers, whereas a Special Power of Attorney acts in only specific enumerated ways.

Preliminary Title Report: An initial report prepared for a piece of real property by a title company. It includes a list of all recorded restrictions on the title of the owner of record.

Prescriptive Right: Right of ownership achieved by long possession. Occupancy for the period described by the Code of Civil Procedures gives title by prescription.

Property, Community: Property owned in common by a husband and a wife as a kind of a marital partnership, including any estates they have may acquired jointly during marriage. Any disposition of any real property rights requires assent of both parties.

Property, Real: Land, and generally whatever is erected or growing upon or affixed to it. Also rights issuing out of, annexed to, and exercisable within or about land.

Property, Separate: Property owned by a married person, in his or her own right, during marriage. That which each can encumber and dispose of at will.

QuietTitle: A court action brought to establish title, or to remove a cloud on the title.

Quitclaim Deed: A deed of conveyance operating by way of release, which can pass any title, interest, or claim which the grantor of the quitclaim may have, without professing as to its validity, nor extending any warrantee or covenants for title.

Reconveyance: Transfer of title of land from one person to the immediate preceding owner.

Reversion: The right to future possession by the person or his heirs, creating the preceding estate.

Reversionary Interest: The interest that a person has in land or other property upon termination of the preceding estate.

Rights-of-Way : An easement allowing use of land by a second party. CDF applies the term to facilities discrete from CDF manned facilities such as the following:

fire access truck trails, fuelbreaks, powerlines, telephone lines, water tanks, helispots, etc.

Rights-of-Way are most always left unrecorded.

Riparian Rights: The right of a landowner to water on or adjacent to his lands.

Statute of Frauds: Those contracts which by statute are required to be in writing, are referred to as coming under the Statute of Frauds, The purpose of this statute is to prevent perjury, forgery and dishonest conduct on the part of unscrupulous people in proving the existence and terms of certain important types of contracts.

Subordination Agreement: An agreement, which the senior possessor of easement rights makes to subordinate his rights to subsequent easement applicants.

Tenancy In Common: Ownership by two or more persons who hold undivided interest, without right of survivorship.

Term: The period, which a contract is to be in effect. If it is anticipated that a contract may run beyond its original term, provisions should be made for the agreement to be amended or extended by the mutual written consent of the parties to the agreement. An additional provision should be made for early cancellation or termination by either party upon giving advance written notice to the remaining party.

Termination: A bilateral action accomplished by mutual assent of both parties to the agreement and effective on the date the second party signs.

Verbal Agreement: An agreement concluded without a written document. A representative of CDF entering into a verbal agreement must be absolutely certain of his/her authority to commit the state to such an agreement. This type of agreement has no legal validity for land transactions (see Statute of Frauds).

FORMS AND/OR FORMS SAMPLES: RETURN TO ISSUANCE HOME PAGE FOR FORMS/FORMS SAMPLES SITE LINK.

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